# HOUSING

Vol. 19 SEPTEMBER, 1930 No. 3

## IS NEW YORK TO LOSE ITS PICTURESQUE SLUMS?

### Its Famous East Side Being Deserted

Recently there has been a great bubbling up of interest in what is to happen to New York's Lower East Side with much talk about its rehabilitation. This has been occasioned by the fact that what social workers had been hoping for years would happen to the East Side has actually happened. Great masses of people have moved away from it, because the old tenements built there in years past are no longer fit to live in—in fact, most of them never were fit to live in, but it is only recently that people's standards of living have reached a point where they could discriminate and select the kind of living accomodations that are suitable to their needs and desires.

The raw peasant population that used to come into New York to the number of 100,000 a year before immigration was restricted as it has been since the War and who could be crowded and packed into any kind of houses are no longer available as tenants of these old and rightly discredited buildings. What is described as a "colossal exodus" has really been taking place in this part of the city. The recently published census figures show how great this exodus has been. In the 10-year period since the previous census was taken this part of the city, comprising the 1st, 2nd, 4th, 6th and 8th Assembly Districts has lost 232,420 people, that is it has decreased 40% in population in a 10-year period.

This decrease in population is by no means in immediately recent years. It began during the War and is distinctly traceable to the country's new immigration policy.

The period from 1920 to 1925 showed a loss of population of 123,702; and the last 5 years, from 1925 to 1930, a loss of 108,718. What may be said to be solidly Lower East Side territory—using the term as popularly understood—showed during that period a total loss

of 115,324, one Assembly District alone, the 4th, having decreased from 94,980 in 1920, to 53,831 in 1930.

According to official reports made by the Tenement House Commissioner, 22½% of all the tenements on the lower East Side were vacant as of January 1st, 1930. The district covered in this statement is bounded by 4th Street on the North, the East River on the East, Roosevelt Street on the South, and Lafayette Street on the West, containing 4,946 tenement houses with 59,352 apartments in them. 189 of these buildings were entirely vacant and 13,369 apartments were unoccupied. Of these but 1413 apartments in 376 buildings were new-law tenements, viz.: those built since the enactment of the deForest-Veiller Tenement House Law in 1901.

### With the Exodus Values Vanish

With this decrease in population—which it is now quite evident is a permanent decrease unless the district is rehabilitated—there has been a corresponding decrease in property values; for, naturally, with a large part of the housing accomodations in this section vacant the returns from such property have been steadily diminishing.

This shift in population is, of course, a splendid thing for the city. Everybody for years has been bewailing the congestion of the Lower East Side and urging that measures be taken to distribute the population. Apparently the people of that district have taken these measures themselves and distributed themselves in a natural way.

It is not strange under these circumstances that the property owners of the district should be asking themselves what is to become of this great part of the city—great in area, at least—and what is to become of their property. The holders of such properties naturally do not care to see them continue to shrink in value until they cease to be revenue producing at all—a state rapidly being approached. Yet, at the same time when the city proposes to take steps to utilize this property for building Model Tenements upon it, it is immediately confronted with the fact that the present holders of the property value it at a fancy figure and hope to obtain for it those values which prevailed when the district was fully occupied, before this great exodus took place.

There has always been a lack of understanding of the true conditions that exist on New York's East Side. It has been such a picturesque spot—something social workers and housing reformers could use as a gigantic exhibit to which to take strangers to show them housing evils developed to the nth power. Just what housing reformers and

social workers will do without this living exhibit of bad housing and of slums, in the event that the East Side should be rehabilitated, is difficult to say. Perhaps they will find other slums in other parts of the city. There are many of them; but they will never find anything quite as picturesque or as interesting as the lower East Side.

### Some Fallacies About the East Side

One of the popular fallacies about the lower East Side has been that it is a district occupied wholly by very poor people. This has never been true. It has been like the rest of the city occupied by all kinds of people. There have been people there—many thousands of them—for many years, who have had good-sized bank accounts, and who have been self-respecting, prosperous people—trades people and workers in practically every branch of industry. Along with these in this great area there have also been many poor people.

One of the most encouraging signs of the possibility of the East Side's rehabilitation is to be found in the fact that leading business men in that district are now alert and alive to the necessity of doing something to bring back property values and to develop the district along lines more in keeping with modern ideas of sanitation, health and amenity than those that have prevailed in the past.

Under the leadership of the East Side Chamber of Commerce and its able and socially-minded secretary, Joseph Platzker, there is a great ferment stirring. This group of East Side business men is keenly alert to the needs of their district. They not only have taken action with the municipal authorities in numerous respects all looking toward the physical improvement of this part of the city, but they have also recently employed a firm of architects as their consultants and advisors to prepare plans for them for the rehabilitation and redevelopment of the whole East Side. A Report on this subject is expected in the near future, setting forth the possibilities of the development of large sections of that territory with modern Garden Apartments.

In addition to these recommendations made by their own advisors, the Regional Plan of New York a few months ago, issued a report advocating the re-creation of the lower East Side as a residential district, stating that it was imperative that this should occur if this section of the city is not to become a still greater economic liability to the city.

The Regional Planning Committee in its Report points out that a crisis has been reached in the situation. The small but numerous industries that once helped with their pay rolls to make the East Side

prosperous have moved away and there has been a corresponding dwindling of the population, with the result that there remain a vast number of obsolete depreciated buildings of all classes—with the inevitable result that values are falling and the city is faced with the prospect of an increasing loss of tax revenue.

### Where Is Mayor Walker's Housing Scheme?

It is undoubtedly this aspect of the situation that has led Mayor Walker to urge for several years the development of Model Housing schemes in this quarter of the city—although as yet nothing definite has come of his recommendations. We have endeavored to secure detailed information as to what the present status of Mayor Walker's Housing Scheme is, but without results. The whole project seems to be shrouded in a mantel of secrecy that is hard to understand. A scheme was adopted months ago by the local authorities calling for the development of 7 blocks along Chrystie and Forsyth Streets in that section. Condemnation proceedings were started, then the announcement was made that the property owners were so outrageous in their demands that the City would abandon the whole scheme unless they were more reasonable. Compromises with property owners were discussed and apparently an agreement reached as to the amounts to be paid for taking the houses; and condemnation proceedings and arrangements for private purchase were started by the city authorities.

There, so far as the public knows, the matter rests, though private information would seem to indicate that a well-known architect has been employed to prepare plans for these model tenements. Beyond that point it seems impossible to obtain information.

Even if Mayor Walker's Housing Scheme should be carried out in the near future—it has taken 3 years thus far and nothing has happened—it would be a mere drop in the bucket so far as the rehabilitation of the East Side is concerned.

### A Napoleon Needed

There is no doubt that the logical and intelligent redevelopment of this vast area—located as it is near to the business section of the city, with parts of it within easy walking distance of that business section—is to be found in the building of modern Garden Apartments for the so-called "white collar" class. It should not be rebuilt as a place of abode for the lower paid industrial workers; for land values

are too high, and, unless all values of existing buildings were wiped out completely, it would never be possible to develop this section with workingmen's homes on an economic basis. The cost of land with the existing improvements is prohibitive for that purpose.

But it is entirely possible for private enterprise through limited-dividend housing companies in co-operation with the City to work out a vast scheme of reclamation for this part of New York. If the city authorities could envision this problem on a broad imaginative basis, and could plan for the razing of most of this district, for its restudy by the best city planning ability to be had in the country, the re-lay-out of its streets where necessary, the development of an adequate park and playground system, the sub-division of property into blocks and lots that would be advantageous to its development with Garden Apartments—there is no doubt that such a scheme could be carried through successfully.

If wisely guided it would rival the famous work of Baron Haussmann in Paris under Napoleon III.

But it is a vast scheme involving the spending of literally thousands of millions of dollars and it requires for its successful carrying out a new Napoleon—not a Napoleon III but a true Bonaparte.

## NEW YORK'S REAR TENEMENTS

How slow the economic process is and how long it takes for objectionable buildings to vanish of their own accord under economic pressure is well illustrated by facts brought to light recently in a study of New York's rear tenements by Joseph Platzker, Secretary of the East Side Chamber of Commerce of that city.

The excellent idea occurred to Mr. Platzker some months ago to see how many rear tenements were still left in his part of the city, embracing the district extending from 14th Street on the north, to the River and Roosevelt Street, on the south, Chrystie Street on the west and Goerck Street on the east.

Jacob Riis of beloved memory would certainly turn in his grave to learn that there are still to-day, in the year of grace 1930, 431 rear tenement houses still standing, in which 10,023 men, women and children still find their home.

When Riis was crusading against New York's bad housing conditions 40 years ago the rear tenement was particular anathema to him, for he found the highest death rate, the highest crime record and the most misery in such buildings. It is true that perhaps he attrib-

uted to the building itself more than was quite justifiable, for the rear houses were always those with the lowest rents and naturally there gravitated to them the "submerged tenth".

There are rear houses and rear houses. Some of them are horrible; these are the famous "back-to-back houses" that still exist in large numbers in the English industrial cities, where one house has its back to the other, thus making adequate ventilation impossible. Sometimes the small space of a few inches is left between these back-to-back houses—which is infinitely worse than their being built solidly—for, in that small space the writer has often seen rubbish and other refuse piled to the height of 3 stories, utterly unget-at-able, there to remain a source of loathsome material to all the people who are condemned to live near it.

That many of the worst rear tenements of Riis' day have disappeared through the course of economic development is undoubtedly true, but that 431 of these houses with a population of 10,000 people should still remain to-day is startling.

Mr. Platzker in his study brings out some interesting facts with regard to them. He says

> The dwellers in this "Rear House Empire" live an existence all of their own. Habits and pleasures that most of them cultivated in their earlier days in the Balkans, Italy and Eastern Europe predominate their every-day life. Coffee houses in these neighborhoods that still consider their trade as fair owe a great deal to the patronage from these tenants. With the exception of a few hundred children, this element is 100% foreign-born and represents by far the largest group of illiterates in this or any other large city in America. Some families in the Russian-Polish and Italian districts admit that foreign letter readers call on them monthly to read and answer their mail.
>
> Most of the men are unskilled laborers, the rest are very small tradesmen. Not all of them are employed, however. Some of them could not find jobs, others would not work and still others feel secure because of the regular allowance they receive either from married children or charitable relations. More than 75 widows live here with their children, usually having enough boarders to pay the monthly rent. * * *
>
> The average market value of the home furnishings of these families are conservatively estimated at $25. With the exceptions of a very few instances, new furniture is a total rarity here.
>
> Last year, less than 20 new tenants occupied apartments in these old-law tenements, while in the same period vacancies mounted weekly. Practically all of the recruits either came from industrial towns in New Jersey or mining towns in Pennsylvania.
>
> Most of these houses were erected in the late 60's, 70's and 80's to house the rising tide of emigration and only a small number have changed hands as often as the neighboring houses without the rear dwellings. Money lending institutions, particularly in the last few

years, accepted no applications for rear house mortgages and that is why the vast majority of them are owned free and clear to-day.

The names of estates owning more than 10% of the rear houses include many socially prominent New York families.

Seventy women including an English lady residing in Birmingham are owners of record of these houses. Only a few of them live on the lower East Side.

It is not pleasant to add, by any means, that 73 tenants in rear houses on Chrystie and Forsyth Streets that are privately owned pay monthly rents from $2 to $4 per room, while 73 tenants also residing in rear houses on Chrystie and Forsyth Streets but owned by the City of New York have been living rent free since October, 1929.

Sixty-three of the houses were reported closed and 28 occupied by caretakers; 88, or more than 20 per cent, were less than 50 per cent rented. Eighty-one were found to be fully occupied.

The largest number is found on Third Street, where 27 such buildings with 124 families were listed; the second largest number was on Forsyth Street, where 20 rear buildings house 108 families. Third place went to Twelfth Street, with 16 houses and 96 families. Other streets with 10 or more were Second, Fourth, Eleventh, Thirteenth, Fourteenth, Cherry, Chrystie, Clinton, Eldridge, Hester, Ludlow, Madison, Monroe, Pitt, Orchard, Ridge and Stanton Streets.

Practically all of the tenants are foreign-born. Thirty-five per cent were found to be Italians, 22 per cent Poles, 16 per cent Russians and 9 per cent Jews. Most of the others are Greeks, Syrians, Turks, Armenians, Rumanians, Serbs, Irish and Swedes.

How long these little back-water eddies on the stream of the city's population will remain no one can tell.

## MORE MODEL TENEMENTS FOR NEW YORK

There has been a great recrudescence of interest in the development of Garden Apartments and other forms of improved housing enterprises in New York City recently.

One of these that holds great promise is the project now being developed by the second oldest model housing company in New York City—The City & Suburban Homes Company—established 34 years ago.

This company, one of the pioneers in this field, even in 1896 showed that it was possible to build model tenements on an economic basis that were commercially successful—and yet which represented great advances in the standards of housing of those days. This company has continued throughout all this period expanding its work and building one group of model houses after another, so that to-day it has nearly $10,000,000 invested in such enterprises.

Under the leadership of its President, C. H. Holmes, and the Chairman of its Board of Directors, R. Fulton Cutting, veteran publi-

cist and leader in the cause of improved dwellings, this company has recently acquired two city blocks in the borough of Queens, most conveniently accessible to mid-town Manhattan, a few blocks away from the Sunnyside Model Housing Development of the City Housing Corporation, and very near to the model apartments of the Metropolitan Life Insurance Company.

The site is almost an ideal one for the development of a series of modern Garden Apartments, occupying as it does two entire city blocks each 190 feet by 600 feet—thus affording sufficient space on which to make a development that will be very well worth while. The site is at present unimproved, having been occupied for many years as an amusement resort, known as "Celtic Park".

The rents in the neighborhood are not so high as to make it at all difficult for the Company to develop on this site modern Garden Apartments that will be within the reach of the average workingman. It will not be necessary for them to cater in this instance to the so-called "white collar" class. The immediate neighborhood is now devoted largely to attractive commercially built one and two-story single-family and two-family houses, with a sprinkling of three-story flats and on the outskirts of the district 4-story ones.

At the present time the officers of the Company are deep in consideration of plans for the best development of this site and are giving attention to many interesting and difficult problems in connection with it.

## GARDEN APARTMENTS FOR NEW YORK

In addition to this development of the City and Suburban Homes Company, Phipps Houses—one of the older Model Housing Corporations established through the interest and generosity of Henry Phipps, which for a number of years has managed three different groups of model tenements in Manhattan—has recently decided to use some of its surplus funds in extending its work by the building of more model apartments.

Like everybody else trying to house working people in New York it has found it difficult to secure land on Manhattan Island at a price that will make such housing possible on an economic basis. It has accordingly, purchased of the City Housing Corporation a part of its land at Sunnyside, in the Borough of Queens, very conveniently located to mid-town Manhattan.

On this site model housing facilities for hundreds of tenants will be provided in new Garden Apartments which the Company expects to develop with modern conveniences at rentals within the means of moderate salaried persons. The property 400 feet by 460 feet, situated on Middleburg Avenue and Dickson Street, is near the tracks of the Long Island Railroad.

In explaining the considerations that have led the officers of Phipps Houses to select this site, they point out that it was due mainly to three factors.

> (1) The demand of working people for reasonably priced yet desirable homes;
>
> (2) The need of both adults and children for some form of recreation and opportunity for relaxation, this need resulting from the complexity of modern life;
>
> (3) The increasing difficulty of creating such an environment in Manhattan for persons of moderate incomes.

Taking these factors into consideration the Phipps trustees finally decided on Sunnyside Gardens—a model housing development established in 1924.

This garden community offers many advantages unprocurable by persons of average means in the Metropolitan district. The Lincoln Avenue station, which will be a 5 minute walk from the new Phipps apartments, is only 20 minutes away from the heart of New York City via either the Queensboro subway, the B. M. T. or the Second Avenue elevated. Transportation, therefore, need cost only 10 cents a day—an important point to consider when incomes are limited. For those who do not have to consider this detail, there is the Fifth Avenue bus which passes nearby. Another advantage is the fact that there are no tall or unsightly buildings in the immediate vicinity to offend the eye and shut out light and air, as the houses already built at Sunnyside are garden enclosed, low in height and attractive in design.

The apartments will be directly located on a beautiful 3-acre private park and playground that cost $125,000. This park is a community pleasure ground for the use of residents and has an expanse of green turf and shrubbery with comfortable benches where mothers may sit while their children play in safety nearby. The playground part of the park is equipped with tennis courts, handball and baseball courts and a baseball field. There is also a play cabin for Boy Scouts and Girl Scouts and others who may wish to hold meetings of various kinds. A boys' class in carpentry is one of the regular features. For small children the park has swings and sand boxes. All activities are

in charge of a play director who lives with his family in the park house.

The new apartments will be the latest expression of the aims of the Society of Phipps Houses, formed years ago as a result of a gift by Mr. Henry Phipps of a million dollars to provide suitable housing conditions for working people in New York.

Mr. Phipps' purpose was that this donation of a million dollars should be used as far as possible toward the construction of proper homes for working people under an arrangement whereby the income from such homes should be accumulated in a fund until that fund became large enough for construction of additional buildings—and so on in perpetuity.

The first building built by the trustees was on the East Side of New York City in the Thirties. The second building was on the West Side in the Sixties and was built for colored people. The third building, also for colored people was likewise in the West Sixties. All three buildings have been entirely rented since their respective dates of completion. There has never been a vacancy in any of them, and most of the time there has been a waiting list for each. They have been rented at rentals which have yielded on an average about 5½% on the money employed, after proper allowance for depreciation.

The accumulation of net income from these three buildings over a period of years has now reached a point where out of their own funds the trustees are able to buy the property at Sunnyside for the sum of $400,000. Out of their funds they will build on this property an apartment building or buildings which in the judgment of the trustees will best serve the needs of the present time.

## CO-OPERATIVE CO-OPERATIVE APARTMENTS FOR NEW YORK

Still another group of Model Apartments in New York City is under way. These are not like the City and Suburban and Phipps model houses Garden Apartments, but are a form of more concentrated housing and located on Manhattan Island. They are projected by a true Co-operative organization which has already demonstrated its ability to make a success of other co-operative services. This group starting in the cafeteria business has gone from one venture to another. In 1923 it took over a co-operative laundry that was on the verge of failure; this did not prove successful. In all its other enterprises, however, success has crowned its efforts. This group—known as the Con-

sumers' Co-operative Services Incorporated—now has 3397 members and operates 4 cafeterias, 4 food shops, a bakery and a lending library with a branch of this library in each of the cafeterias. In 1928-1929 this organization had a business of $612,226, and a net operating gain of $32,530—a rather remarkable showing.

Its new housing development is a modern apartment house located on West 23rd Street, opposite the grounds of the General Theological Seminary. On this site a 12-story, fire-proof apartment building is now being erected; it will contain 66 apartments, ranging from 1 to 4 rooms each. Automatic elevator service is being provided. The monthly rental of the apartments will range from $25 to $35 per room, from which it is seen that this building is intended for the white collar class. The architects are the same architects who have done such good work in planning the Amalgamated Housing Corporation's developments in the Bronx and the new one now under construction on the Hoe site on the lower East Side of New York. A special feature of this project is that it contemplates food service facilities for the tenants, as well as recreational facilities on the roof.

A word as to the financing of the project may not be amiss. The land and building are expected to cost $666,000 to be raised as follows: $321,000 by first mortgage borrowed from a bank; $140,000 by second mortgage bonds sold to the Society and its members; and $185,000 by investment of the tenants; the remaining funds will be advanced from the funds of the Society. The bonds will be in denominations of $100 and up and will bear interest at 6%. A sum of $10,000 is to be set aside "to constitute a market for members' bonds," the intention evidently being to take bonds off the hands of members when for various reasons they find it necessary to move away and surrender ownership of their apartment.

The Society looks upon this housing scheme as simply a beginning in this field. If it is successful the group plans to "bring the savings of co-operative housing to all the members of Consumers' Co-operative Services."

## WOMEN MANAGERS OF HOUSE PROPERTY

With the increased activity in the building of model tenement enterprises in this country, the time is rapidly approaching when there should be a career open for intelligent and competent women in the management of such property.

In England and in Holland there has been a notable development in this field in the use of women managers since the ideas of Octavia Hill were first set forth 70 years ago.

Even the local authorities in England are finding the problem of management of their many housing schemes at times a difficult one and are wisely turning to women to aid them in this situation.

Not all women are competent to manage a model housing enterprise—anymore than are all men. It is a task which calls for qualities of a high order—not only native qualities but skill and training as well.

Persons interested in this aspect of the housing question, will be glad to learn of a short pamphlet issued recently by the Ministry of Labor of England for official use, in their Choice of Career Series, entitled "House Property Management for Women." In this 6-page pamphlet an attempt is made to set forth the qualifications that a person should have if contemplating embarking upon a career of manager of house property. The pamphlet deals with the following aspects of the subject:

> The Scope of Professional Duties; Qualifications, Personal and Technical; Professional Training, Practical and Theoretical; as well as the topics of an intermediate and final Examination held at the College of Estate Management; and concludes with a statement of Prospects of Employment and a brief Bibliography of the subject.

We commend this pamphlet to all persons in America who are interested in house management. It is known as Choice of Career Series 4A, and can be obtained from H. M. Stationery Office, Adastral House, Kingsway, London, W. C. 2., Price 1d. net.

## WHAT MODEL HOUSING MEANS

An excellent statement of the advantages that those who live in model housing enterprises receive is found in a statement issued by the Paul Laurence Dunbar Apartments calling the attention of prospective tenants to the desirability of getting their names on the waiting list if they wish to have the opportunity of living under these desirable conditions. The statement follows:

*If you think so much of your family group that you wish them to live where the repeal of the emergency rent laws will NOT result in the boosting of rents; but*

where you will accumulate property of value by the same small monthly payments—or even smaller!—by which you are now acquiring a collection of worthless rent receipts:

in buildings so admirable that they received the American Institute of Architects First Prize for 1927;

where one-half of the site is devoted to beautiful gardens;

where every room in every apartment is an outside room, flooded with sunlight and fresh air;

where persons and properties are protected by a vigilant constabulary commissioned by the Police Department of the City of New York, which systematically inspects and safeguards every stairway, every dumbwaiter shaft, every roof, and every basement as well as every nook and cranny of the grounds at every hour of the day and of the night;

where the younger children enjoy the advantages of a perfectly appointed day nursery, releasing their mothers for lucrative employment, to shop, or for the refined enjoyment of well-earned leisure;

where the older children have a real playground equipped with every modern facility and a clubroom of their own for use in cold weather and on rainy days, all under trained supervision;

where the gainfully employed are not dispossessed because through the chances of business and industry they have lost their jobs, but actually placed quickly in other and better jobs;

where your neighbors are all persons of good character;

where there is no boisterousness or horse play either by day or by night and the tired worker may enjoy the sleep of the just;

where the buildings are always absolutely clean and orderly from basement to roof.

## LOW COST HOMES ACHIEVED

### By a Woman Home Builder

Kate Gleason, an engineer and home builder, has given in the columns of the *American Contractor,* the results of her experience and experiments in building low-cost homes in the city of Rochester, New York. What Miss Gleason has done and what she has to say in that article is of such value to the cause of housing that we are reproducing most of it here. Miss Gleason says in part:

> What I have been working at the last seven years is to build a low cost house that is comfortable and beautiful, adapted to the wants of the people in the United States who live where the cost of coal has to be considered but where land is cheap enough to allow at least one-eighth of an acre to each house, large enough for a family with some children to care for, on an income of $1,500 a year or less.

There is nothing original in my methods or plans. There are thousands of good examples for study because for so many centuries men and women of great ability have been interested in the houses in which they lived and have worked to improve them. For instance, a Benjamin Franklin grate can be built in a fireplace at a cost of less than $50 and it has all the cheer and the ventilating qualities of a brick fireplace that costs $200 besides being more economical and more effective. * * *

The design of the house is the most important factor. Besides comfort and beauty it must be adapted to assembly methods; that is, to the standard lengths of lumber; to the standard sizes of wall and plaster board; to the standard sizes of plumbing fixtures and connections; to the standard sizes of windows and doors.

### Keeping Labor Employed All the Year

It must be designed to give continuous employment, winter and summer, to the same crew of men. It is asking too much to demand loyalty from men who are continually having to change employers and accept lost time. * * *

I have a comfortable shop in which in the winter we make many parts of the house that we can put in place when the weather permits—colored stones for walks and entrance, tile for sewers, tile for chimney, foundation slabs, cement blocks for cellar walls, garage doors, special doors used for kitchen and closets, book shelves, china closets, frames made and fitted to windows and doors, arches, stairs and roof girders, staining and valsparing beams and trim, windows and doors.

It seems to me the greatest single factor in the success of cutting costs is to employ handy men instead of skilled tradesmen. For the handy men any building work is a promotion, even the building of a small house, while a mechanic, who has spent three or four years learning his trade wants to work on something important, like an apartment house or commercial building. A man's pride in his work is more important than money, though the pay also must be more than his old job gave him. It is my invariable experience with trained building mechanics that they will not deviate from the methods they have been taught, and that they will not change from carpenter work to mason work, to plumbing, to painting.

On a million-dollar building a jack of all trades would be a nuisance; trained specialists are necessary. But a $4,000 house has so small an amount of work of one kind, that the men must be trained to do all kinds. Five men to a house make an ideal gang. The leader can work and direct the other four. More than five requires so much directing that the leader cannot work himself. Three men could build a house, but it would take too long. For the electricity and plumbing, retired business men who still keep their licenses can usually be found to oversee their particular kind of work, enough to secure the necessary certificates from the underwriters and the plumbing board.

### The Builder's Plant

While I am talking of the workmen is a good time to discuss the machinery I have found that will help them most. The motto of one of the original machine tool builders, Sir Joshua Whitworth, was, "Come,

let us try," and I have applied that in buying and trying machinery for small house building. It has cost me at least $20,000 for heavy mixing machines with power enough for automatic loaders and placing plants; for portable elevators that cost $400 to erect each time they are moved; for steel forms put together with bolts that were always getting lost; for wood forms made so heavy it took too long to get them up; for steel scaffolds that would bend out of shape the first time they were thrown to the ground in dismounting them; a saw table too heavy to move, etc., so that part of my advice ought to be worth at least $20,000 without counting the time I spent finding I wasted it. Four hundred dollars is not too much to spend for erecting a hoist on a $50,000 job. I have found that the machinery which is so essential on big buildings is designed for them, and it is too expensive to move for small jobs.

What I advise is a two-wheel mixer with a 2½ horsepower engine. It weighs about 1,000 pounds and can be readily pulled around by hand. A bench saw table with a ¾ horsepower electric motor costs complete with guards, emery wheel, saws, etc., about $75. And for lifting, a few 12-foot extension ladders with scaffold brackets and a half-ton triplex hand hoist. I use an elevator I made of an extension ladder and a triplex hoist. It carries the bucket in a straight line from the mixer to the chute, and it can be moved at a trifing expense. It is so simple that it would be nonsense to think of a patent as a protection, but I have thought of applying for one just for the style of having my name along with Henry Leland's, Ambrose Swasey's and W. R. Warner's in the Patent Office. A light truck is advisable, and three trailers. A storage shed with a door at each end large enough for 1200 bags of cement. A storage shed about the size of three carloads for an office, small tools and building material. A flush water closet should be preliminary to the building job. It is required by some building laws.

I have no good advice to offer about forms; I have not seen or devised any with which I am satisfied. Those that are easy to handle take too long to put together and those in large sections are too heavy, when they are made strong enough to withstand the pressure of the wet concrete. The ones I am using are of wood, made in sections eight feet by ten feet and weigh 300 pounds each.

There is one place we must follow, to the detriment of our job, the practice of the contractors on large operations, and that is in the use of the one cubic foot bags of cement that weigh 94 pounds. A half cubic foot bag weighing less than 50 pounds would be a better size for our mix and easier for our men to handle continuously, but the cement mills cannot furnish the smaller size. The mills, through the Portland Cement Association, spend more than a million dollars a year in experimental work and publications to educate builders in the best use of cement. One of the reasons that I use cement as much as I can is, that when I knew less about the business than I do now, the pamphlets issued by the Portland Cement Association gave me enough information to make an intelligent start.

The plan used is the result of seven years' study and practice in pleasing the men and women who buy my houses. We depend on the roof lines and the color of the house for variation in appearance.

## No Advantage in Omitting Cellars

It is sometimes advised, as an economy, to do away with the cellar; a 15% saving is claimed. But where we must go down at least 3 feet for the foundations, a good part of the expense for the cellar is in the foundation, and it costs less than $100 extra for the other 3½ feet of wall to make a cellar 6 feet 6 inches in the clear, including also the 3-inch thick cement floor, the 3-inch steel sash and the extra grading.

The $100 gives a place for the furnace, coal storage, a place for the laundry, for the fruit cellar and for a workroom, and, as all these are strictly necessary rooms, the cellar is the cheapest and most convenient place to put them. We first cut a trench about one foot wide and three feet deep below the natural lot level. We line the bottom of the trench with cement slabs (precast), one foot wide. These, when the cement cellar floor is afterwards poured to meet them, furnish the mat foundation that enables a building to ride even an earthquake. On the slabs we erect the wall to the floor level, which is 3½ feet above the ground level. We then dig out the 3 feet of dirt inside the wall and spread it on the garage side within 16 inches of the floor level; and on the laundry side 30 inches down, so as to give good light in the laundry and furnace room, and on the other two sides as high as possible, so the house from the front will appear to hug the ground. The fruit cellar window is the only one on this side, and as it is only for ventilation, it does not need to be high above the ground. We leave the pouring of the cement floor in the cellar until after the first floor is poured and until after the sewer is in.

Unless the building codes require a foundation for the vestibule, it is more economical and more efficient to erect it on a wide slab. For the garage, we use a pier foundation to frost line and reinforce the garage floor over the piers to form a beam which carries the wall. To build the garage as part of the house saves a lot of room, and even if you build nothing over it, you would save the cost of one long wall. But in my design you get besides that a big room upstairs at the expense of only three walls and a floor. And still more important, the extra length of the garage makes possible a projection for the range that gives us a kitchen long enough to combine a breakfast room with it.

Now we come to the first floor. The vestibule is necessary in our climate, and, with its coat hooks, it gives extra closet space. The entrance is in the center, so that the end of the living room with its two windows could be easily partitioned off for an extra room. The floor is poured concrete 4 inches thick, reinforced with Clinton welded wire, supported by an 8-inch square column and an 8-inch T-beam. It is leveled as it is poured with a sidewalk finish and the next day, when it will bear a man's weight without showing the footprints, but before it has had time to harden against nails, it is covered with low-cost asphalt roofing, over which a one-inch subfloor of the cheapest grade of lumber is nailed to the concrete. The concrete floor makes the cellar, with its furnace, fireproof.

It takes concrete some time to dry thoroughly, and the asphalt paper keeps the dampness from the wood subfloor while the concrete is drying. When all the rough work of the house is done and it is ready for finishing, an oak strip covering is nailed to the subfloor.

## The Kitchen

The kitchen and lavatory are finished with linoleum instead of subfloor and oak top. The cost of the asphalt paper, subfloor and oak top is 10 cents a square foot, besides the small cost of laying—less than half of anything I have tried in the way of a smooth, hard finish to the concrete itself or a good linoleum. Besides that, the oak top suits the purchasers best.

Next, the kitchen. The sink has drain boards on both sides with shelves below and a window beside it 10 inches deep. Then a china closet and double window, deep enough for a window box above the table. Another closet in the wall. A window which shines into the range room. And the range is in a hooded alcove with ventilating pipe running through an upstairs closet to the roof.

The walls around the range are poured concrete and they are fitted with hooks for mixing spoons, covers, pots and pans. The door leads directly to the cellar way, to the refrigerator and to the back door through the garage. There is space between the kitchen cabinets and the wall for the ironing board, so that it can be used in the kitchen or carried to any other part of the house; so much handier than a built-in board. A steel broom closet comes next, big enough for the vacuum cleaner. It is really one of the standard steel lockers, enameled grey, with hooks and a shelf—the type used in all factories. And there is a cupboard 3 feet wide, with doors, for supplies. The china closets in the wall of the kitchen, as well as the book shelves in the wall of the dining room, utilize 6 inches of wall space, which would be wasted otherwise, and they make deep reveals at the windows which are very attractive.

The dining room has a bay 4 by 12 feet, walled with windows, which transforms the room into a sun parlor as well. I find that I can furnish this two-story projection and equip the lavatory and build the vestibule for $8 less than I could build the ordinary 8 by 10-foot front porch. And it is another case of giving people what they want. The fireplace is precast concrete around a Franklin stove. The flue for the furnace is built on the concrete floor of the living room. As this is strong enough to carry the weight of the chimney, we can save the expense of going down the other 7 feet to the cellar floor.

The soil pipe is in the corner and it clears the beam in the laundry. Both lavatory and bath room closets are centered two feet from the wall to accommodate without cutting the standard fitting, closet to soil pipe. Both basins are centered 42 inches from the wall. The heavy fittings from closet and bath tub in bath room run along the outside wall, where they do not interfere with floor beams, and the smaller connection from basin to soil pipe takes only a small cut in one beam at the point where it is supported by partition wall.

## The Shell

Now for the shell of the house. The walls of the garage and of the range are poured concrete. It is fireproof and it is the most economical construction I know where no air space nor inside finish are required. But for the rest of the first floor and all the second story, I find that applied concrete is cheaper for the outer walls. The amount of hemlock needed for studs and plates costs only $40 at the present retail market price, delivered to the job. With a fireproof outer covering and

a fire-resisting inner wall, the fire hazard is very small, and I have, therefore, not yet studied the possible economy of a steel frame. We use 14-foot sticks, 2 by 4's cut in 6 foot 10 inch and 7 foot 2 inch lengths. With the floor plate 2 inches for the first story and a double header 4 inches and exposed floor beams 8 inches, we get a total height of 8 feet, which complies with all building laws I have seen. The windows are fitted to the frames before erection and the frames are fitted as the studs are placed. Stretchers or cripples are nailed between studs at 4 feet above the floor level. They stiffen the frame and make a dead air space. They are another good feature of the San Francisco building laws. Their special advantage to my scheme is that the 4-foot wide Celotex which I use for the inside finish can be nailed to them along its greatest length, and I design all wall spaces about the 8, 10 and 12-foot standard lengths of Celotex, so as to avoid vertical trim. There is a small horizontal band about the height of a chair rail all around the room which does not interfere with furniture or pictures.

I have found that an unheated house lined with Celotex is 50 degrees when it is 30 degrees outside. It is the best insulation for heat and cold I know at the price, which is 4 cents a square foot in carload lots. For the outside walls, I use a sheathing of heavy asphalt roofing. Over the sheathing I use about 2 inches of cement stucco on a base of National Steel Fabric, which is a combination of reinforcing with heavy building paper. This comes in squares of 51 inches, to allow for lapping, and it can be nailed to the outside of the same stretchers as take the 4-foot Celotex inside, because the extra 3 inches are enough to overlap the cement floor below the 2-inch floor plate. We plaster the steel fabric by hand with a rough stick coat of cement. We allow this to dry thoroughly for several days to show all the shrinkage cracks it is going to have. Then we give a light finish coat (colored), which fills the cracks, and gives a pleasing texture. The window frames are built with enough angle to keep out any water that drives against them and to make elaborate trim unnecessary.

So far I have used wood windows and sash except in basement, but I believe in steel casements precast in cement frames. I find the truss roof better and cheaper than the ordinary "V." In addition to my mistake in buying cumbersome machinery, I made at the beginning another mistake, in buying everything in quantity. In electrical goods, plumbing and hardware, I lost 40% by theft, even though I had a storekeeper. Lumber, I lost 30% by theft and waste. It is safe to buy in large lots cement and reinforcing and special material, like Celotex, for which there is not a popular demand. The way I buy lumber now is to contract for it in carload lots through a nearby lumber yard that will deliver it in small bolts as wanted.

## Cheaper Than the Ready-Cut House

You can see I have designed a house very simple to build, more simple even than to assemble a ready-cut house. One of my neighbors has just put up three ready-cut houses for which the material cost her $1130 each, delivered. They were 5-room bungalows with a porch but no attic. By the time she paid for cellars, framing, roof, plaster, trim, plumbing, heating, electricity, walks and bringing in the gas and water, her cost was $4000 each. Where for that amount my system produces a more beautiful house with 9 rooms and a garage, including many

built-in features, like kitchen cabinets and all kinds of extra closets and book shelves, as well as a fireplace.

I am one of the lucky ladies with a love of travel and the freedom to go. I have had opportunity to study beauty in California and France, where I have gloriously beautiful homes to live in. I have studied comfort in Northern New York, where I was born. I have friends living in Brooklyn apartment houses which seem to me the last word in convenience. I have lived in Japan long enough to admire the flexibility of their homes, which has influenced my design in making combination kitchen and breakfast room, dining room and sun parlor, bed room and study and living room and courting room. The loveliest planting I have seen is in England. And the most economical methods in Italy.

## A "LAND DICTIONARY" FOR THE PUBLIC

The National Association of Real Estate Boards has performed a public service in attempting to make plain to the ordinary man in the street the meaning of the terms that are used in deeds and in realty generally.

In a statement prepared for the press of the country they ask: "What is the difference between a mortgagee and a mortgagor, and a lessee and a lessor? What do amortization, debenture, and depreciation mean? What is accretion?" And then they proceed to elucidate the meaning in popular terms of the leading expressions that are most frequently used in real estate on the theory that it is well for property owners or prospective owners to know the words that have come to have a common usage in referring to realty matters. This "land dictionary" includes definitions of such subjects as Abstracts of Title, Appraiser, Amortization, Appurtenances, Assessments, Debenture, Curtesy, Consideration, Easement, Eminent Domain, Escrow, Fee Simple, and a host of others.

We suggest to the National Association of Real Estate Boards that they will render a further public service to the man who is thinking of buying a home or of buying land if they will arrange to have every local realtor supply in attractively printed form this "land dictionary" to his prospective client.

This is a practical suggestion that we offer to the realtors of the country which we think they will find it advantageous to adopt.

## APARTMENT HOUSES OR DWELLINGS—WHICH?

The Planning Board of New Rochelle, N. Y., recently conducted a door-to-door survey of apartment houses in that city with a view to determining among other things the following:

1. Do apartments pay the city?
2. Do apartments pay the tenant?
3. Do apartments pay the owner?

Two comparative fields were studied. One of these was composed entirely of modern apartment houses; the other consisted of typical single-family houses among apartment houses, occupied by about the same class of people. Information covering 29 buildings containing 945 apartments and over 50-single-family houses was tabulated according to assessed land and building values, the number of tenants, the number of suites, the number of rooms etc. This study disclosed the following facts:

The building cost per room averaged about $1300 for the dwellings and between $1500 and $1700 for the apartments, the difference being accounted for by the fireproof or semi-fireproof construction of the apartments.

The land cost per room, taking an average for 15 apartments, was $130; whereas the land cost per room for 56 typical dwellings averaged $575—or 4 to 5 times as much as for the dwellings.

The building cost per family averaged $9100 for the dwellings and $5600 for the apartments—or less than two-thirds as much as for the apartments. If the same construction were used in the dwellings as in the apartments the latter would cost less than half as much per family.

The land cost per family or apartment was $465 for the apartments and $5020 for the dwellings—or nearly 9 times as much for the dwellings.

The assessed value of land per family ran from 6 to 13 times as much for dwellings as it did per apartment. The average number of square feet of land per person was 203 square feet for the apartments and 1180 square feet for the dwellings—or 5 times as much.

The average number of square feet of building floor area per family was 956 square feet for the apartments and about 2000 square feet for the dwellings—or over twice as much.

The apartments averaged 3.4 rooms per family, whereas the dwellings averaged 7 rooms per family—or almost exactly double.

Whereas the dwellings had twice as many rooms per family as the apartments, they cost 3 times as much.

The average number of people per family was 4.25 for the dwellings and 2.8 for the apartments.

The number of children or minors per family was 0.4 for the apartments and approximately 1.5 for the houses. In both cases two-thirds of the children were of school age.

The automobiles were only 1 for every 2 families in the case of apartments, and at least 1 for every family in the case of dwellings.

The garage capacity on the premises was only about 1 car for every 8 families in the case of the apartments, whereas it averaged over 1 car per family in the case of the dwellings.

The apartment dwellers appear to use the shops in New Rochelle fully as much as the house dwellers.

The average monthly rent per room was $29.20 for the apartments —approximately $350 per year. As there were on an average 3½

rooms per family, the average rent per apartment per year was $1225. In proportion to the number of rooms the dwellings should rent for an average of $2500 per house per year. The actual rents for such few houses as are rented was not available, but 12% of $15,300 the average cost of land and dwelling is $1825 per year—or 50% more than the apartments for 100% more rooms. All costs were based on assessed valuations.

From these statistics it would appear that the apartment house and the dwelling each have their place. Where there is a family of children of pre-school or school age, the dwelling offers more advantages in proportion to the rent than does the apartment. However, for families where there are no young children, or possibly at most one child, and for single adults the apartment offers distinct advantages. With the constant decrease in the size of the family, the number of families or individuals who would find it preferable to live in an apartment is constantly increasing. Therefore, the market for apartment houses is increasing.

From the standpoint of the building owner the rapidly increasing price of land per square foot in New Rochelle and the number of square feet that must be preserved around houses for health and safety is making it more and more difficult each year to build new 1-family houses to rent. On the other hand, even the garden type of apartment with relative large open spaces around it is a more economic proposition to the owner and to the tenant than is the 1- or 2-family house.

From the city's standpoint the apartment house pays in taxes per square foot of land about 3 times as much as the dwelling. However, the apartment brings about half as much in taxes per family as does the dwelling, but it is believed that this is more than counteracted by the lesser service per family which the city is required to render the apartment dwellers in all sorts of public services and improvements, including schools. The fact that there are over 3 times as many children of school age in the dwellings as in the apartments would alone go far toward striking the balance in favor of the apartments from the standpoint of the city's service.

As to fires and contagious disease, the records seem to show no advantage one way or the other, although the increasing tendency to build fireproof apartments is tipping the balance in favor of the latter.

Furthermore, the investigation shows that it is entirely practicable and economic to insist that no new apartment house should cover over 40% of the lot and under many conditions it would be practicable to limit them to 30, 20 and even 15% of the lot. The survey also shows that it is no hardship to limit apartments to 4 stories in height unless they are restricted to a very small percentage of the lot area.

So far as we know, this is the first intensive study of the apartment house in relation to a community that has been made in this country. The New Rochelle Planning Board is to be highly commended for their initiative in making it. We commend similar action to all communities throughout the United States where the apartment house is beginning to supplant the private dwelling.

# THE APARTMENT HOUSE LEASE

## As a Humorist Sees It

H. I. Phillips, who writes that delightful column in the New York Sun, known as "The Sun Dial," thus describes the modern apartment house lease as it seems to a man who has just signed one.

The Tenant covenants:

First—That he has no rights under this lease whatsoever or everso what; and that he shall at no time during his occupancy of the said premises have any ideas to the contrary.

Second—That if the leased premises shall be damaged or destroyed by fire the Landlord shall not be understood to have heard about said fire for a period of ninety days, at the end of which time he shall be allowed thirty days to inspect the premises and ascertain the damage; and that if the premises are in such condition that the Tenant cannot occupy them with comfort, said Tenant shall be allowed to sleep in the hall until such time (if ever) that the repairs (if any) are made.

### Flood

Third—That the Landlord shall be held in no way responsible for flood due to broken water pipes, snow, rain or other causes; and that in the event of such a flood the Tenant hereby covenants to pump out the premises at his own expense and make no charge for buckets, pumps, boots, &c.

### Entry

Fourth—That the Landlord shall have the right to enter and show the apartment to any person or persons at any time for a period of eleven months prior to the expiration of the lease; or for eleven months three weeks and six days in the case of a one-year lease. It is further agreed by the Tenant that he will assist the Landlord in showing the apartment, serve light refreshments, sing, play, do card tricks and otherwise make the inspection pleasant.

### Dispossess Notice

Fifth—That if the Landlord does not like the Tenant's face or is displeased with him for any other reason he may notify the Tenant to quit the premises and the Tenant must get out buckety-buckety.

### No Liability

Sixth—The Landlord shall not be held liable for any accidents, annoyances, inconveniences or worries due to faulty construction, defects in building materials or other causes, and in cases of falling ceilings, collapsing walls, &c., it is expressly agreed that the Tenant will not bring up the matter.

SERVICE

Seventh—The Landlord does not promise to give any service, and the Tenant hereby agrees not to expect any.

COMPLAINTS

Eighth—It is agreed that the Tenant shall make no complaints during the term of lease nor in any other way annoy the Landlord or his agents with tales, reports and stories of unhappiness or dissatisfaction.

Ninth—It is agreed and understood the Tenant is never to get an even break during the period of said lease, and that he shall not under any circumstances allow notions of a contrary nature to enter his head.

In witness thereof, the Landlord and said Tenant have signed and sealed this lease this day.

Signature of Landlord.....

Signature of Sap.....

## THE AUTOMOBILE CHANGING OUR CITIES

Stanley McMichael, the Cleveland realtor, author of "City Growth and Values", "How to Make Money in Real Estate" and other standard books on real estate subjects, at a meeting of realtors in Louisville some months ago discussed the influence of the automobile on real estate. He said in part:

> The automobile has done more to rearrange, disrupt, spread out and relocate realty values than any other element in the history of real estate in America, and most of the influence has been felt within the past decade. * * *
>
> The automobile has had a more potent influence on the physical growth of cities in recent years than all other elements combined. It has widened and extended the limits of communities and new satellite towns and villages have sprung up on the borders of cities. These new communities have been the handiwork of realtors during the past 10 years, made possible largely because the passenger automobile and the motor bus have afforded adequate transportation facilities.
>
> The automobile has changed the habits of city life; it has introduced problems as to the direction, width and character of occupancy of streets; it has sent the small merchants to the outlying business districts which have sprung up near residential areas; it has permitted a workman to live ten, fifteen or even twenty miles away from the place where he labors; it has made available for residential purposes huge areas of land, which but for motor driven vehicles would still be used for pasturing cows. The disturbance to, and the distribution of, land values has consequently been tremendous.
>
> What the automobile has done to city growth and the creation and distribution of land values is still little understood, and is not being realized by many. Individual transportation as contrasted with mass

movement on street cars, railroads and vessels, has caught the popular fancy. The slogan is not merely "a car for every family," but "a car for every adult in the family." Ten or fifteen years will doubtless see from 40,000,000 to 50,000,000 motor vehicles traveling the highways of this land.

How are American communities to take care of this influx of new, rapidly propelled, motor driven vehicles? Existing highways will have to be widened and extended at vast expense. New main arteries of travel must be created by linking up isolated street units, or cutting boldly through existing built up territories. The growth of a city is limited by its ability to transport people and goods from one point to another, and if American cities are to continue to grow, they must be prepared to take steps to accommodate the rapidly increasing volume of traffic which looms in sight.

Distance today is measured in minutes and not in miles. It is not a matter of how many miles it actually is to a given outlying point, but the time it takes to get there with our modern forms of transportation that counts. Thirty years ago, when horse cars were in use in most cities, it took one hour to travel out a radius of four miles. Then came the electric street car, which doubled the distance one could live from one's work downtown, and still get home in an hour's time. Later came interurban cars in larger cities, and one could travel out fifteen or eighteen miles, and still do it in one hour's time.

Then came the automobile. Motor car manufacturers were seized with ambitions to furnish machines on a mass production basis. Each year saw not only more cars being placed in commission, but better and cheaper cars. Improvements on new models were poured on to the market unceasingly. Prices were cut ruthlessly. Ford emerged as the motor king, and it became common for a workman to own and drive his own car to his work each day. With steadily mounting land prices in evidence in cities, the workman went out to the border of the city, bought himself a lot or an idle acre, and built his home. If he lost his job in one factory, it simply meant that he had to travel ten minutes farther to another plant where he found a new job. This spelled endless opportunities for realty developers who had been accustomed to thinking in terms of street cars to get their patrons to their subdivisions.

Consider the automobile bus. There are now in commission in the United States hundreds of thousands of buses having a larger mileage than the entire railroad mileage of this country. Cities have ceased extending new street car lines with expensive equipment in the form of power plants, costly cars, steel rails, trolley wires and upkeep. Buses, with self-contained power plants, costing considerably less than street cars, now serve vast new areas in and between towns and cities. It is my opinion that another decade or two will see the passing of the surface street car in most cities and towns. Nearly everyone will own and operate his own automobile, and those who do not will ride on buses.

A few years hence will see 40,000,000 automobiles roaring along the highways of America. More radial highways are going to be built to accommodate them. As each new one is completed, it will be filled with traffic. Intelligent study of this subject has scarcely begun. City plan commissions and municipal councils are going to find ways to project, finance, and build new arteries. All of the increase in traffic is coming downtown. Belt line thoroughfares around cities will be constructed to shunt traffic away from congested areas. New business

frontage of incalculable value is going to be constructed out of back yards, and what are now cheap, deteriorating residential districts. Keep ever in mind that a city's growth is absolutely limited by its ability to move people and goods from one point to another. Our cities are not going to permit themselves to be stifled because of the necessity of spending a few millions of dollars which can be collected back in taxes in a few years on newly created property values. When the time comes, the improvements which are necessary will be planned and carried through. It behooves cities, therefore, to be thinking of these things and planning for the future.

Not only urban land, but farm land as well has seen a revolution in character and value as the result of the automobile. Where is the farmer today who doesn't own a motor car of some kind? Indeed, many of them own fine cars, and often there are two or three to the family. Speeding seventeen miles from a farm into town in thirty minutes to a picture show, and arriving back home at ten o'clock means nothing now. A generation ago, it meant a tedious drive from early dawn to late dusk. The farmer who formerly fed his milk to the pigs now loads it on a passing truck bound for the town creamery. Merchandise is brought by traveling stores right to the farmer's porch. The automobile has reflected millions upon millions in increased land values on farms, as well as immeasurably increasing the comforts of farm life. Indeed, the automobile may turn the tide of population from the cities and towns back to the rural districts again. What this country needs as much as anything is a condition where more people are producing things instead of being merely engaged in handling and selling them, and the automobile may accomplish this.

## WHAT A HOME MEANS

Eloquent testimony as to the value of home ownership is furnished by the National Association of Real Estate Boards in a series of statements from prominent American citizens in widely divergent groups. It asks what becomes of children who are raised in owned homes. In later life does such environment leave its stamp upon them? Do the sacrifice and struggles with which many homes are bought give anything to children when they go out into the world? Is there any connection between success and early life spent in an owned home?

Dr. Ray Wilbur, Secretary of the Interior in President Hoover's Cabinet, writing from Washington, says:

> Practically all of my childhood was spent in an owned home and I think that this was an important factor in the development of that family feeling and background which has played a large part in my interests in life.

R. W. Babson, the noted financial expert, writes from his home in Massachusetts:

I was born in a home owned by my father who brought me up with these three principles: "1. Own your Home. 2. Never borrow money with which to speculate. 3. Never endorse a note for any purpose."

Walter Dill Scott, President of Northwestern University, Chicago, says:

I was born in a home that was owned by my father. He was a man of very restricted finances, but during the 40 years of his ownership there was never a mortgage on the house. We had a very definite feeling that the house was ours and our rights in it must not be jeopardized even by a mortgage. In my judgment this attitude was a factor in developing a sense of responsibility in me.

Daniel Chester French, famous sculptor, writing from his New York studio, says:

I was brought up in a house owned by my father and I never knew until about 10 years ago any other sort of domicile. About 10 years ago I gave up my dwelling house in New York in favor of an apartment which I consider a decidedly downward step.

I do not know whether being brought up in a house helped me to lead a more or less respectable life but I am a firm believer in a home. I do believe that living in an owned house, especially in the country, has a decided effect for good upon the growing youth.

And Merle Thorpe, editor of "Nation's Business" confirms these statements as follows:

Both my wife and I were reared in homes owned by our parents. Our children have been reared in homes owned by their parents. In each case the ownership of the home contributed greatly to the well-being of the family. My experience has demonstrated that there is truth in the statement that the ownership of a comfortable home is a great source of happiness and that it ranks immediately after health and a good conscience.

America is rightly proud of the freedom of opportunity offered every citizen and of the encouragement accorded individual initiative. We may be equally proud of the widespread recognition our people have given to the great benefits of home ownership. Yet many more thousands of our families can and should engage in the enterprise of owning homes.

I believe that family stamina, family pride, family culture, and economic well-being are fostered when the family is its own landlord. Not alone money savings and physical comfort, but moral and spiritual benefits of great value can thus be realized. The family is the social unit of our people and the family-owned home the strongest link in our communal life.

## NEW LIGHT ON HOMES

As a result of the questions that were asked in the 1930 Census for the first time in this country, new information should become available with regard to home valuations and rentals. This information will be of great importance not only to the real estate profession but to all persons interested in home ownership. For the first time the enumerators have asked the value of the home—if it is owned—or the monthly rentals paid, where it is not owned. One of the bi-products of this information will be the fact that it will make possible a classification of families according to their economic status or buying power.

Commenting on the determination of the Bureau of the Census to obtain this information, the National Association of Real Estate Boards points out that "the findings of the census will make it possible to ascertain the percentage of home ownership in the many cities, counties and villages throughout the United States, which, when correlated with the cost of homes in those same localities, will show to what degree the cost of homes in a given city determines the extent of home ownership in that community. Likewise the data collected on this question in the census taking, when correlated with a study of the obtaining systems of home financing in different cities, can show what, if any, influence the local home financing methods have on the extent of home ownership. Interesting statistics can also be made available on the average value of the home and the average rental in any given city as compared with the average home value and home rental for the country as a whole."

## HOW GOVERNMENT AIDS HOUSING IN THE U. S.

Readers of these columns have frequently encountered the statement that in the United States there is no Government-aid to housing—meaning "Government-aid" as ordinarily understood, that is the granting of subsidies, or the loaning of funds at low interest rates to housing enterprises. Such methods are foreign to American principles and do not find acceptance in this country.

There are, however, other ways in which Government should and does aid the cause of housing. That aid is made manifest chiefly through a Housing Bureau in a great Government Department, the Division of Building and Housing in the U. S. Department of Commerce.

Setting before the people of the country the service which this Division renders, the National Association of Real Estate Boards recently raised the question, "Why does the Government have a Hous-

ing Bureau?'' And asked what connection is there between the large white building in Washington where a great many men make long reports and the average person about to build a home. They point out that these officials who the average home owner does not know exist, have had much to do with punching holes in obsolete building codes, advancing the fight for equitable zoning laws, protecting investments by discouraging over-building, pointing out the economies of winter construction, and showing a group of manufacturers who were making too many sizes of bath tubs how to cut down on the number. They add that the work of the Housing Division in which President Hoover when he was Secretary of Commerce took especial pride, has affected the size and shape of thousands of homes throughout the country and has led people to home ownership a thousand miles away from Washington.

How vital a factor in the country's prosperity the building industry and its various ramifications is, and how closely it touches the pocket of the man in the street—the little fellow who perhaps doesn't know there is such a thing as a Division of Housing of the Government—is pointed out. More than a million and a half people are employed in the building trades in the United States—not including the hundreds of thousands of people engaged in the manufacture of building materials, home furnishings and equipment used in homes, or those people engaged in the transportation of building materials and the coal companies who deliver fuel for large manufacturers, and many others directly and indirectly dependent for their wages on conditions in the construction field. This great army of people is spending nearly half its time in erecting homes, as more than 40% of all construction in the United States during the past 5 years has been in residential buildings.

Thus, practically two and a half million people are dependent for their livelihood on how the man in the street feels about home ownership. If building material prices soar; if the legal ramifications of home ownership irritate a prospective home owner; if his local building code seems unfair; if he simply does not do anything about acquiring a home because he knows nothing about how to proceed; then, the great construction industry suffers, unemployment follows, and everyone out of and in these trades is hurt. Nor is the evil confined to this one trade. When the building trades are out of work the sales of automobiles, fancy groceries, women's hats and other commodities decline. This is one reason why the United States Government is interested in improving working conditions in the construction industry, in raising the standards and in lowering the cost of American homes, and in encouraging people to buy and build their own domiciles.

In its effort to raise the standards and lower the cost of American homes the Division of Building and Housing in the early part of its work very wisely spent much time and study in formulating a standard building code that might be used in cities throughout the country and take the place of the unscientific, inadequate and unduly costly building codes in vogue in so many communities. When it started its work in this field it found 800 different building codes in effect in as many different cities, with requirements varying from a 17-inch brick wall in one city to an 8-inch brick wall in another city for the same class of work, viz., the 3-story home. It pointed out very naturally that one of these dimensions must be wrong; and that if a brick wall does not need to be 17 inches thick in a 3-story building, then home builders who are forced to use such a wall were buying more brick and paying more for their dwellings than they should.

Similarly with regard to plumbing. The plumbing of a building, as everyone knows, forms a very important and considerable item in the cost of the home, yet the Division of Housing when it started work on its Standard Plumbing Code found that the Codes in some cities called for 4-inch plumbing soil pipes, whereas tests of the Bureau of Standards showed that a 3-inch pipe was quite adequate for any small home—and in many ways was better.

These are but a few illustrations of the kind of work which the Division of Housing has done, a service which could not have been rendered by any other body than a government bureau. It is gratifying, therefore, to know that the Standard Building Code and Plumbing Code adopted by the Division of Housing have already been used in more than 200 American cities.

In addition to these services the Division has encouraged the making of vacancy surveys in different parts of the country so that realtors and builders in these communities might know the actual conditions they had to face, and not build blindly—which had often in the past resulted in over-building with its unfortunate consequences to realty and to the building construction industry.

Probably one of the chief services which the Division has rendered has been the stimulus which it has given to the development of zoning and city planning. An advisory committee consisting of eight leading authorities in this field was appointed at an early date and evolved a Standard State Zoning Enabling Act, which has been adopted in 35 States and under whose power and authority zoning has become an actual entity in 856 cities throughout the country, so that today over 39 million people or three-fifths of the country's population are living in zoned communities—with all the protection that this means. Later,

this Advisory Committee drafted a similar Standard City Planning Enabling Act which is also finding wide acceptance throughout the country.

Finally, very practical aid to the building of homes and to home ownership has been supplied by the Division in its studies and in the preparation of booklets on the subject of home ownership and home financing. Their two popular pamphlets, "How to Own Your Home" and "Present Home Financing Methods" have found their way into hundreds of thousands of homes and have helped develop a desire for home ownership by showing the practical ways in which it could be achieved.

It is evident, therefore, that while America does not incline toward that form of Government-aid to housing that prevails in Europe, it does furnish very real and valuable aid in other ways.

## WHY FARM LABOR IS SCARCE

### Bad Rural Housing a Factor

Although farmers are rapidly beginning to realize that the better class of migratory laborers cannot be held unless comfortable living quarters are provided, California is about the only state that has seriously considered the problem of eliminating insanitary, poorly ventilated and overcrowded rooms for helpers, it was stated recently by the U. S. Department of Labor in connection with a recently completed survey.

In the majority of states migratory laborers are quartered in rude shacks, tents, or old outhouses, the survey revealed, and little attention is paid to sanitation, ventilation, and comfort. In even the best camps congestion is felt, and insufficient cubic air-space is provided, it was stated.

Laborers' families in sugar-beet sections often occupy any kind of shelter that is available for temporary use—abandoned farmhouses, rude frame or tar-paper shacks, and even tents and caravan wagons—though some sugar companies provide one or two-room portable cottages for their laborers. The dwellings are in many cases in bad repair, dark, ill ventilated, and far from weatherproof.

Beet-field laborers sometimes describe their quarters as "not fit for chickens to live in" or "nothing but a dog house."

Overcrowding is extreme. A Michigan migratory laborer tells of having been forced to live for two weeks, while waiting for quarters

for his family of 5, in two rooms containing 19 other people; during this time his baby caught cold and died.

Sanitation is poor and the water supply, especially in the irrigated districts, is often neither plentiful nor protected against contamination. Many of the beet-field laborers occupy their "beet shacks" for five or six months a year.

The migratory laborers of the hop yards and orchards of the Pacific coast live in camps on the grower's premises, some of them villages in themselves, housing several hundred persons. Nearly three-fifths of the families in the Willamette Valley district in Oregon included in the Children's Bureau study and nearly all in the Yakima Valley district in Washington lived in tents. The others occupied one-room frame houses built in rows, each with one window.

### Three to Five in One Room

In both tents and "bunk houses" extreme overcrowding was found; two-thirds of the families in one district and almost all in the other had 3 or more persons a room and in the latter the majority had 5 or more.

A regulation of the Washington board of health called for a specified amount of air space for each person in frame houses in laborers' camps, but the regulation did not extend to tents, as a similar one in California does, and Oregon had no such regulation for either houses or tents. The Washington regulation was not enforced in the camps visited.

Sanitation of labor camps in Washington and Oregon is regulated, and sanitary conditions were better than in farm-labor camps visited by the Children's Bureau in some other sections.

In Maryland, in the country around Baltimore, individual farmers maintain camps for the migratory workers. Most of them contain but one building, known as a "shanty," which serves as sleeping quarters for all the workers, a weather-beaten or unpainted structure the windows of which usually lack either glass or shutters, or both.

As a rule there is but one room on each floor, with stairs on the outside leading into the upper room. On each side of a narrow aisle down the center the floor is divided into sections or pens by boards 10 or 12 inches in height, each section being about 6 feet long and from 4 to 6 feet wide and covered with straw for a mattress.

Each family is allotted one of these pens. At night men, women and children, partly clad, one family separated from the next by a plank, lie side by side.

In southern New Jersey the truck-farm laborers are generally housed in labor camps on the growers' premises, the camps varying in size from a rude building or two, housing half a dozen families, to large well-organized settlements, villages in themselves, housing 300 to 400 pickers. The camp buildings are either one or two room rows or large two-story barnlike structures divided into small rooms upstairs and down and housing many families, or in some cases, as in Maryland, not divided into rooms but having the family spaces with their straw and rough bedding, merely marked off by a board set on edge.

In California the State immigration and housing commission, which enforces the State law regulating labor camps, passed about 15 years ago, is said to have revolutionized living conditions for migratory farm laborers in the state since the days when ranchers used to bring in hordes of workers, many without assuming any responsibility for their housing, merely permitting them to sleep on the ranches.

## SYNTHETIC HEALTH IN THE HOME

Tuberculosis would have long before this become a negligible disease if the cure for it had not been so simple. The average human being for some reason or another rejects a cure which is not complex and something beyond his understanding. When you say to a man that all he needs to do to be cured of tuberculosis is to get plenty of fresh air, sunlight, rest, wholesome food and abstain from harmful occupations for a while, he will as a rule have none of it. But if you can offer him something out of a bottle, call it by some fancy name and charge him a high price for it, he will try everything of that kind until he has one foot in the grave.

Apparently, this tendency of the human mind to reject results arrived at simply and to seek some complex and roundabout method when the same results could be more easily achieved by more direct methods, is to govern us with regard to health in our homes in future, as well as in the cure of diseases of the body—if one can believe the predictions that have been recently made by a consulting electrical engineer, Dr. E. E. Free.

He envisions the house of the future as a sound-proof house in which there will be no windows for light or air and in which the rooms for sleeping, working and amusement will be supplied with medically prescribed "artificial weather", the particular kind of weather supplied being that deemed best for each activity. Such houses will be electrically ventilated and lighted without glare, with electric lamps giving

out rays of the proper proportion of sunlight—which according to Dr. Free can be provided at prices to make them available for persons of moderate means. These houses are no Utopian dream, but in his opinion something upon which construction could begin tomorrow if the industry decided to do it. He expects to see them quite common by the year 1950.

Dr. Free rightly points out that many American homes are either too hot or too cold, too moist or too dry, too draughty or too stuffy. But what he fails to realize is, that they are in that condition, not so much because they have been defectively built, as because of the fact that the people who occupy them have their own standards on these important questions. Houses are too hot because the people want them hot, or too dry for the same reason, too stuffy because, like the French, they fear *courant d'air*. If Dr. Free has ever tried to get a Pullman car properly ventilated and heated, he will know what sort of a task he has before him in getting houses kept at the right temperature and with the right amount of humidity and moving air.

Once more, apparently, human beings are to be asked "to buy something out of a bottle". Instead of building houses and cities so that every house and every room can secure the full advantages of natural sunlight and sunshine, and all the benefits of the ultra-violet and infra-red rays that can be obtained from the sun—and from no other source so satisfactorily—we are to continue building our cities, according to this gentleman, so as to shut out these things which now can be had for the asking.

Apparently it has never occurred to this eminent electrical expert that the methods that we now employ in the building of such great cities as New York and Chicago are quite unnecessary and that it is only done because a few individuals can make a great deal of money out of it, and because the mass of the people are so uninformed as to tolerate it. When the great mass of the people realize that they are being cheated out of the vital things of existence when they permit a man to build a building to an undue height or to occupy a greater amount of the land than is wise, we are confident they will put an end to it; and, instead of artificial light treatment in windowless homes, we shall build our houses and our cities in such fashion that every person will have the full benefit and advantages of the sun—a source of light, of power, of health that, heretofore, no man has found a substitute for, and, we believe, never will.

## NO RIGHT TO LIGHT IN AMERICA

In striking contrast to the splendid attitude of the English courts and the English people with regard to man's inherent right to light and air in the place in which he lives or works, is the American point of view—best expressed perhaps by the legal phrase *caveat emptor,* let the buyer beware.

A striking illustration of this attitude of American courts was had not long ago in a decision handed down by the Appellate Division, in the Second Department of New York State, in a case originating in Brooklyn. A tenant in that city raised the issue that he had been subjected to a constructive eviction because the landlord had erected a building so close to the premises rented by him that his light and air were cut off.

In this case the tenant had rented the property for an automobile repair shop. At the time that he rented it, the windows on one side of the building opened upon a vacant lot, the property of the same landlord, with ample light and air. Later, the landlord shut off the light and air supplied to the side windows by permitting a building to be erected close to the building under discussion.

The tenant made the claim that by leasing the property to him with the windows unobstructed the landlord had impliedly agreed not to build on the adjoining land so as to shut off the light and air supplied to the side windows of the premises leased. In other words, that the building was presumably leased to the tenant for a specific use, of which the landlord was quite cognizant, and that when the landlord by his own action in permitting the erection of a building that would make that use of the building impossible, violated an implied contract.

Justice Kapper, writing the opinion of the Court says:

> I am of the opinion that the contention ought not to be upheld. According to the great weight of authority, not only in New York but in many other jurisdictions, a landlord is under no obligations to his tenants not to erect a building upon other lands belonging to him, even though the result is to cut off the light and air from the leased premises, unless there is some covenant or agreement in the lease forbidding such erection.

The Court cites as controlling a case frequently cited and never overruled (Myers v. Gemmel, 10 Barb. 537) to the effect that a landlord can lawfully darken or stop the windows by any erection on his adjoining lot, and that such an act was not in derogation of the lease and was not subject to restraint by injunction.

Contrasted with the attitude of the English courts which uniformly sustain their law of Ancient Lights, America would seem to be in the Dark Ages.

## SHUTTING OUT THE LIGHT

With the wider interest that has come in all countries, and notably in England, with regard to the beneficial effects of the ultra-violet and infra-red rays, it is not surprising that the English technical journals interested in building and architecture should begin to raise questions as to the extent to which it is necessary to provide adequate light in buildings, and also the extent to which when adequate light is provided, it is very often shut out by the tenant.

One of the things in English housing that always strikes the American observer as somewhat extraordinary is the English custom of designing bedrooms with large and delightful windows affording a maximum of light and air and then having the occupiers of the house put across the whole width of such a window a dressing table or bureau, shutting out most of the light and making access to the window both for purposes of ventilation and outlook, so difficult as to be almost impossible.

Commenting on the recent demand for more light, one of the English technical journals points out that 75% of the windows in a street in a northern town were observed to have at least one half of the glass area obscured by blinds, side curtains and lower curtains. They very pointedly say that:

> Either the light was not required and the windows were too big, or the care of the carpets was the first consideration.

They add that "no satisfactory reason can be given for the permanent blind covering the top third of the window; it is either an ornament or the windows are too large."

They suggest that here is an excellent opportunity for women to demonstrate the oft-repeated claim that houses should be designed by women and that no man can properly design a residence.

## THE "REAL" IN REAL ESTATE

The National Association of Real Estate Boards in an effort to meet the so-called "new competition"—under which the people of the country have been showing in recent years a greater desire to spend their money for automobiles, radio, talking machines and similar things than to put it in a home—has recently called attention to some of the profits made by intelligent investment in real estate in different parts of the country.

In a recent statement they cite 30 real estate transactions—some of which extend for 15 years, and some of which cover only a year or

so—giving specific instances in different cities throughout the country, and practically covering every part of the country, in which large profits have been made by intelligent investment in real estate, in each case giving the actual location of the property, the price paid for it when it was bought, and the price realized when it was sold. Heading this list is a corner in Amarillo, Texas, which was purchased at a cost of $2,250, and 15 years later was sold for $210,000. Following this is cited a lot in Birmingham purchased for $18,750 and sold for $75,000 4 years later. Similar instances are given for many other cities, one in Chicago for property purchased for $60,000 and 5 years later sold for $140,000.

There is no doubt about it that there are great profits to be made from intelligent investment in real estate and the national association of realtors is doing the country a service in bringing these facts to its attention.

---

## A SHELF OF BOOKS

### WASHINGTON PAST AND PRESENT*

As one reluctantly puts down Charles Moore's fascinating book on Washington, one says "What a delightful, mellow book!" Every person who likes books for themselves, who likes literary charm and style will have a most delightful evening reading this charming book. The only trouble with it is that when you once take it up you cannot put it down.

Every American who is interested in the Federal City—and what American is not?—will find in this book a new joy in Washington. Heaven forbid that we should suggest that this delightful literary excursion could even remotely suggest a glorified guide book, yet there is no book on Washington that would be more helpful to a person unfamiliar with its treasures than this delightful history of its past and this account of its present, written by Charles Moore with a mellow and graceful ripeness from long knowledge and experience of Washington that is most unusual to find in books in these days.

Every city planner will find this book essential to his library and to his understanding of the development of Washington. For he will learn here many things about L'Enfant and the development of the Plan of Washington and the difficulties that he encountered. He will also learn—perhaps to his surprise—how a political boss, Boss Shepherd, perhaps did more for the development of Washington along sound

---

* *Washington Past & Present by Charles Moore, The Century Co., N. Y. 332 pp. Price $5.*

town planning lines than even L'Enfant himself. For, as Mr. Moore points out, if it had not been for Boss Shepherd's vigorous personality and his wonderful knack in getting things done, Washington to-day would be a very different city.

City planners will also learn a number of most delightful things—some of great value. One of these is the fact that the whole scheme for the development of Washington was based on what is considered a very modern idea, namely, the idea of Excess Condemnation, now being challenged in our courts, and based, indeed, on the very theory that is challenged at the present time, viz., the theory of "Recoupment."

For, it was the plan of Washington and his associates in developing the Federal City to secure the revenues for its development by selling every alternate lot and holding the lot next to it for federal purposes. From the revenue thus received it was expected that sufficient funds would be forthcoming to finance the development of the city. While Washington's expectations in this regard were not fulfilled, the fact remains that a principle was carried into effect at the very earliest beginnings of our government which city planners to-day are finding essential to an intelligent and effective re-planning of our cities.

For lovers of art, the book is a delight, for one may stroll with St. Gaudens and hear from his own lips the true inward meaning of that priceless possession of the American nation the Adams Memorial.

Probably there is no one person living to-day who has done so much for the development of Washington according to ideas of sanity and beauty as Charles Moore, the author of this book. With a modesty that is most unusual, and that is very genuine, he puts himself entirely in the back-ground of the picture, so that a person who did not know of his historic relation to the development of Washington would gather from this book no inkling of the important part that he has played in it.

The book is a delight, something to be read and re-read—something for a quiet hour by the fire, something to read just before running down to Washington for a little holiday. Every book lover should have it in his library. L. V.

## THE THAMES VALLEY

### A Model Regional Planning Report

It is difficult to think of an England without the river Thames. As Mr. John Buchan, the distinguished English novelist and historian,

says in his preface to the book "The Thames Valley"*, "Of all the rivers of England the Thames has played the most notable part in her making, and its valley has been the cradle and nursery of most of her institutions * * *. Its influence stretches far further afield than that of well-defined mountain dales and its long, slow-flowing tributaries on both banks, link it with remote areas. * * * Though it has been a theatre of history, the Thames Valley has changed its character less, perhaps, than any other river system in the populous parts of this island. We have in it, therefore, something which is more than a centre of historic memories—something which has preserved into our own day many of the visible characteristics of an elder England."

With unerring instinct Mr. Buchan has seized upon that element of the uncomprehended charm of the Thames which makes it so fascinating not only to all English people but to their American cousins.

This regional plan report on the Thames Valley, in which some of England's most distinguished town planners have collaborated, including in their number such men as Patrick Abercrombie, S. D. Adshead and Harding Thompson, is probably the first regional plan report that has almost as great an appeal for the general public as it has for the more limited group, who are interested in its technical aspects. Every lover of England and every American who wishes to make a pilgrimage to the Thames—especially to its upper reaches—will find this delightful book not only a pleasant companion, but a most helpful aid in such pilgrimages.

To the city planner in the United States as well as in England, the book is a model of what a regional plan report should be—both in its method of presentation and in its content. It is printed on beautiful deckel-edged paper with broad margins and with large and open type that is a delight to the eye. The illustrations, consisting chiefly of photographs taken by the Earl of Mayo, alone make the book worth having, for the photographer has caught with keen artistic appreciation some of the loveliest spots in all England. The maps and plates are almost as attractive as the photographs.

We advise every American city planner to secure a copy of this delightful and fascinating Report; and, after studying it with regard to its interesting and technical presentation of the problems involved, make up his mind that he will spend his next summer holidays in England with book in hand, following up the fascinating Thames in its

---

* *"The Thames Valley from Cricklade To Staines", by the Earl of Mayo, S. D. Adshead, Patrick Abercrombie, and W. Harding Thompson. With a Preface by John Buchan, M. P. (University of London Press, Ltd.) 10 Warwick Lane, London. 15s. and 21s. net. 1929.*

uppermost reaches. That is what the reviewer of this book has already done.

L. V.

## HOUSING IN SCOTLAND *

*"Continued Housing reform is vital. Its need is living."*

With this slogan, G. W. Clark sounds a clarion cry to "Carry on, Scotland!" in a book recently published, entitled "The Housing of the Working Classes of Scotland".*

This is one of the most provocative books on the subject of housing that has come to our attention in recent years. We challenge any one to read it without finding himself raising all sorts of questions.

There have been many reports published with regard to housing conditions in Scotland, including some famous Blue Books, but we know of no report in recent years that is likely to prove as valuable as this very interesting presentation of Scotland's housing problems and the suggestions for meeting them.

How challenging the book is may be realized from the following introductory remarks of the author:

> The First Hundred Thousand houses provided in Scotland by official enterprise has been received, if not with enthusiasm, at least with resignation. For one thing, there were 100,000 middle class and better working class families ready to take advantage of a system that provided a house where part of the rent was paid by the public.
>
> What about the next Hundred Thousand?
>
> Probably 99 out of every 100 persons who are presently satisfied with their present home are asking "Where is this spate of official house building to stop"?
>
> One half of the world does not know how the other half lives, and it is natural that any person who is not familiar with Scottish housing conditions as they exist to-day, in spite of the provision of 100,000 houses, but who unfortunately has to be familiar with an annual demand for rates and taxes, must feel as he views housing scheme after housing scheme that the time has now come to call a halt.
>
> Official expenditure is at all times viewed with suspicion. Hidden motives, wire pulling by interested parties, bureaucratic action is surmised, accordingly it is not to be wondered at that there is now a widespread feeling that if more houses are required, the people requiring them should pay for their own, and that private enterprise would readily meet the demand.
>
> In other words, that the further encroachment of official ownership into housing is not desirable, and that while subsidised housing has fulfilled its legitimate part in national welfare, relief from taxation is now of greater importance than the provision of further houses.

---

* *The Housing of the Working Classes of Scotland by G. W. Clark. B. Sc., C. E. Hay Nisbet & Co., Ltd. 73 Dunlop Street, Glasgow, Scotland. 173 pp.*

The book is divided into two broad divisions, Part One describes "Conditions As They Are," the other describes the "New Situation." In a discussion of existing conditions, the author treats of such aspects of the problem as the following:

> The Relative Housing Shortage in Scotland and England, The Index Figure to General Conditions, National Overcrowding, The Standards by which Overcrowding is measured, Relative Overcrowding, Population Grouping, The Family and Sub-letting, Housing Distribution, Scotland's Curse—the 1-roomed house, Scotland's specialty—the 2-roomed house, The Influence of the Undersized House, Lancashire and Scotland, The 5 Largest Cities in Great Britain, Existing Contrasts in Glasgow Wards, A Novel Building Programme for Glasgow.

The manner of treatment of the subject and its presentation and the utilization of diagrams and tables is rather novel and most effective. It suggests a classic book of 30 years ago that of Alderman Thompson, of London, in his "Housing of the Working Classes" where a similar method was employed.

Students of the housing problem in all countries will find it highly advantageous not only to secure a copy of this important publication, but to study it with close attention. It merits it.

## THE FOLLY OF GOVERNMENT HOUSING

### As Seen by an English Publisher

Not all the people in England, by any manner of means, are convinced that the way to achieve the proper housing of the masses of people in that country is through government subsidy or government action. To a very large element of the population "that way madness lies".

A refreshing outlook upon this aspect of the question is to be found in a book, recently published, of a great London publisher, Ernest J. P. Benn, entitled "The Return to Laisser-Faire".*

One of the chapters in Mr. Benn's book, deals with Housing. In this he points out the folly of looking to Government for solution of the housing problem or the supplying of the housing needs of a country.

Mr. Benn explodes many fallacies. With refreshing sanity, he points out the real facts with regard to slums and their development, about which there has been much confused thinking—not only in England but other countries. On this point he says:

---

* *The Return to Laisser-Faire by Ernest J. P. Benn. Bouverie House, Fleet Street, London, 1928: 222 pp. Price 6s. net.*

> In discussing the housing problem, therefore, it is desirable first of all to deal with some wholly false notions which seems to have fastened themselves upon the public mind. The first of these is that which deals with the first appearance of a slum. It is all too commonly supposed that in the days when the factories were appearing in the towns a class of person, not at all clearly defined, set out of evil purpose to build houses of inferior materials and unhealthy design, and that the workers, in some way which is never explained, were forced into these hovels by the same evil persons.
>
> Surely nothing could be farther from the truth. The houses which we of the twentieth century, with our greater knowledge, now regard as inadequate and call slums were, at the moment of their building, literally palaces to the people who occupied them. The builders of 100 or 70 or 50 years ago built, just as we do to-day, in the very best way that was possible, having regard to the materials and the labor and the knowledge available. These houses, when built, very naturally attracted large numbers of poor people living in conditions of indescribable hardship on the land.

In these days, when so many people are looking to Government to do the things which they should do themselves, it is refreshing to find such clear thinking on this great question. Every person interested in the housing question in the United States will find it advantageous to read what Mr. Benn has to say on the subject of Housing.

## HOW THEY DO IT IN LONDON

### Controlling High Buildings

Every once in so often a smart American business man visits London for the first time and noting the absence of skyscrapers, immediately sets his active mind to work and before he has been there a few hours has mentally organized a new corporation "to show the Londoners how to build" and to reproduce over there the American skyscraper.

It is not many days, however, before he comes a cropper; for he learns not only that the English people will have none of such things —which they rightly consider an invention of the devil—but he finds an even greater obstacle in his path in the fact that the London Building Laws will not permit it.

In that civilized country people still have a right to light and air; and any person invades that right at his peril. In addition to the Prescription Act under which the Law of Ancient Lights is invoked, there are also the building regulations found in the London Building Act, which effectively restrict the height of buildings with relation to the width of streets and the size of other open spaces that adjoin them.

There is much that Americans can advantageously learn by a study of the methods employed in England in keeping down buildings to a reasonable height and spreading the population instead of concentrating them to a high degree in a few spots, with the resultant problems that we are so familiar with in New York.

American city planners as well as American housing experts and others interested in city development will profit by a perusal of the London Building Acts.* This book, now in its fifth edition, contains all of the laws dealing with the control of buildings in London that have been enacted from 1894 to 1928, with a comprehensive index and notes and cross references, legal decisions and diagrams.

## "FIRST AID" FOR THE HOME**

A helpful and informing book to home owners for doing practical work about the house and of understanding better the physical aspects of the home surroundings is "The Home Owner's Manual" by Dorothy and Julian Olney.

It tells every householder how to be his own carpenter, electrician, plumber and gardener.

It describes with great clarity and minute detail many useful suggestions for solving the problems that confront the householder, such as, the various kinds and uses of Tools and Wood, Carpentry, Painting and Wood Finishing, Wall Papering, Plumbing, Electricity, Heating Systems, Furnace Operation and Fuels, the Grounds, Outdoor Woodwork, Cement and Stone Work, Play Facilities, the Lawn, Flowers, Shrubs and Trees and information on repairs generally. It also contains a bibliography of interest to the home owner, as well as tables of weights and measures, and is well illustrated.

Harry Schwartz,
New York City

## SLUM CLEARANCE IN THE U. S. MENACED

### The Excess Condemnation Case

A battle has been raging in the courts of last resort which apparently has not come to the notice of most of the city planners and

* *The London Building Acts, 1894 to 1928, by Bernard Dicksee, F. R. I. B. A. Edward Stanford, Ltd., 12 Long Acre, W. C. 2, London, England. 1929. 360 pp.*

** *The Home Owner's Manual" by Dorothy and Julian Olney. The Century Co., New York, 1930. 240 pages. Price $2.50.*

housing reformers of the country. Had the highest courts rendered an adverse decision, slum clearance in America would have been made so difficult as to have been almost impossible, and the replanning of our cities would have become so expensive and so difficult that few replanning schemes would have been undertaken.

Not long ago, there was decided by the Federal Circuit Court of Appeals in the city of Cincinnati a case involving the validity of the provisions of the Ohio State Constitution with regard to the power of "Excess Condemnation". The people of Ohio had a few years back amended the Constitution of that State so as to permit cities and other localities throughout the State "in furtherance of a public use to appropriate or acquire an excess over that actually to be occupied by the improvement, and may sell such excess with such restrictions as shall be appropriate to preserve the improvement made." (Section 10, Article 18 of the Constitution of Ohio).

It would seem as if having thus amended the basic law of the State—ratified by a vote of the people of the State—that the people in Ohio cities might rest secure in the belief that they could use this important power of Excess Condemnation where circumstances warranted it.

In connection with a street widening in Cincinnati that city started proceedings to take an additional strip of land beyond the amount actually needed for the street widening, so as to make a better disposition of the property in that part of the city.

Some of the owners of the property that was taken promptly challenged the right of the city to exercise the power of Excess Condemnation, claiming that the whole power was void.

The case did not get into the state courts but found its way immediately into the federal courts; and in an opinion handed down by the Circuit Court of Appeals, *Cincinnati vs. Vester, Same vs. Richards, Same vs. Reakirt, 33 Fed. R. 2nd. 242,* it was held that this provision of the Constitution is void, and that it was not within the power of the people of the State of Ohio to give themselves the power proposed.

An appeal from this decision was taken to the United States Supreme Court by the City of Cincinnati, and came on for argument in that court early in March. Admirable and convincing briefs in support of the use of this important power were submitted on behalf of the City of Cincinnati by its city solicitor, John D. Ellis, and on behalf of the State of New York by Deputy Attorney General Henry S. Manley, as well as by other states that were interested.

The leading housing and city planning organizations—viz. the National Conference on City Planning, the National Housing Association, the Planning Foundation of America, the American City Planning Institute, and the N. Y. Regional Plan Association—realizing the importance of this case to the cause of city planning and housing, and particularly its vital relation to the re-planning of cities and the clearance of slum areas asked leave of the United States Supreme Court to file a brief as *amicus curiae.* A printed brief was prepared for this purpose by Lawson Purdy, in which he was aided by Lawrence Veiller. Unfortunately, under the rules of the U. S. Supreme Court no organization or individual is allowed to intervene as *amicus curiae* except with the consent of both parties to the action. Such consent in this case was granted by the City of Cincinnati but was denied by counsel for the property owners affected. Therefore, Mr. Purdy's brief could not be filed.

When the case came up for argument in March, the United States Supreme Court—without expressing any opinion on the broad question of the power of Excess Condemnation—took the view that the statutes of Ohio required the city authorities to specifically indicate the purpose for which the excess property was to be used. As the City Council of Cincinnati had not shown the use contemplated for the property taken in excess, the case was sent back—the court holding that the action taken by the Cincinnati authorities was void for this reason.

It is obvious that it is only a question of time before this issue will again be before the highest courts.

The issue is of such importance that we quote at length from Mr. Purdy's brief. The significant parts of it are as follows:

### Mr. Purdy's Brief

There is at stake in these cases not alone the trivial interests of the property owners involved in one city of the United States, but the future welfare and development of all of the cities of the country for all time to come.

This brief will not discuss case law nor go into a history of the use of the power of Excess Condemnation. That can safely be left to the parties at interest.

What we do intend to place before the court, if we may, are the broad questions of public policy that are involved in the determination of the right use of the so-called power of "Excess Condemnation."

This Court has again and again declared that it is with the utmost reluctance that it finds it necessary to declare a statute unconstitutional.

In this case the Court below has not only overturned a statute but has overturned the constitution of a state. It has thus nullified the people's will. For in this instance the constitution of the State of Ohio was specifically amended and ratified by popular vote to permit the exercise of the power of "Excess Condemnation" which the court below holds that the People of that state may not exercise.

### Not Limited to One State

It is not only the Constitution of Ohio which is on trial, but recently enacted provisions of the constitutions of the States of New York, Massachusetts, and others.

### The Purpose of "Excess Condemnation"

The purpose of "Excess Condemnation" as set forth by the Court below is inadequately stated and only in part comprehended. To understand this purpose, we must consider particularly the previous state of the law, the mischief to be remedied, and the remedy provided. It is not without reason that we find state after state for the last 25 years amending their Constitutions to provide for the use of this power.

### Previous State of the Law

The previous state of the law was this, that when land was acquired for a street opening, or widening or for a park or other public place, only the identical land required for one of those declared purposes was taken by condemnation.

### The Mischief to Be Remedied

The mischief to be fully understood should be studied not in one proceeding alone, in one city alone but in the history of many proceedings in many cities. Our cities are growing by leaps and bounds. New streets are needed through congested sections. Old streets must be widened and congestion caused in part by buildings of great height and bulk must be met by the acquisition of new open spaces. Even in ancient times cities grew, new streets had to be opened, old streets had to be widened, but the size of cities was limited until recently by the ability men had to provide water and food for the inhabitants. Modern engineering methods have made possible a water supply. Modern means of transportation, including refrigeration, have made possible the feeding of great masses of men gathered in huge cities. They have thus made possible the modern city.

The opening of a street in a congested section of a city or the widening of a street, or the acquisition of land for a public place or park is like a major surgical operation upon the human body. The opening of a street is a wound which takes time to heal. Sometimes it never heals. When healed it leaves a scar. To the trained eye these scars are visible for a generation and more than a generation where streets are opened or widened. Scars mean suffering. They mean economic loss. They mean waste which can never be recovered. Not only is this so but when such operations are paid for in whole or in part by assessments on the land deemed to be benefited, the assessment often falls with crushing weight on owners of land of such shape and size and so located with reference to the new or widened streets that the owners cannot reap the natural reward of these improvements.

### The Remedy

The remedy afforded by "Excess Condemnation" or rather "Incidental Condemnation" is under proper circumstances the taking of land lying next to the street or public place in such fashion as to cause the least damage to buildings to provide the most suitable sites for the kinds of buildings which should be erected on the new or widened streets, to the end that the owners of property shall not be subject to assessments which are out of proportion to the benefits immediately realizable, that the economic advantage of the community shall be served by putting the street to its best use and the land bordering the street to its best use, which is to the general benefit of the whole community and for the benefit of those who own the land adjoining the street as well. Incidentally, there may be and have been cases in which the city recovered part or all of the cost of the improvement by the sale of land increased in value by the replotting of the land in suitable sizes and shapes, and the benefit accruing by reason of the widened streets, or the new street, as the case may be.

### Application of the Remedy

The use of excess condemnation in the United States is too new to afford striking examples familiar to the court of its advantages. Most of the members of the court are familiar with the present appearance of Northumberland Avenue in London from Trafalgar Square to the Thames Embankment. Before Northumberland Avenue was opened the land was encumbered by old buildings and if that avenue had been opened to its present width leaving the land plotted as it was,

it is improbable that it ever would have been developed to serve the uses of the people of London in any such admirable fashion as is the case.

This illustration is not selected because of the financial success of this proceeding but because it affords a good example of the many advantages of the procedure. Imagine, first, what was the condition of this land and then recall to mind the wide avenue lined with substantial buildings admirably conceived to serve the highest purpose for which the land was adapted. A new thoroughfare was needed. We have such a thoroughfare connecting two important points. It is developed to the best advantage which architects of the time could conceive. Incidentally and naturally and because it is properly developed it adds beauty to the city of London. Because the thoroughfare was needed, because the land was replotted appropriately it was sold for a sum in excess of the whole cost of the proceeding leaving a surplus in the city treasury.

This Northumberland Avenue proceeding was not merely to acquire remnants of land; it was not solely for the purpose of protecting the new street by appropriate restrictions upon the buildings erected; it was not solely because the replotting was necessary; it was not primarily or chiefly the fact that the proceeding could be carried through without general expense to the taxpayers; it was not chiefly for the benefit of the persons who owned the land bordering the new highway or near it. It did achieve all these advantages. If this was not a public use then never was a street opened and land acquired for a public use.

### Application of the Principle to This Case

In the case at bar it is obvious that the plan was laid out with a view to achieving the maximum benefit to the city and to the owners of the property which might be practicable. It would have been folly to destroy a valuable building abutting on the widened street. It would have been poor planning to take a lot only 44 feet deep on a street calling for a building of much greater depth. The map showing the property to be acquired indicates plainly the proper purpose of the officials who laid out the property to be acquired. They acted with discretion having in view the large purposes to be achieved. Never was a plan of this kind made that some one did not allege that it might have been done differently. There may always be differences of opinion as to minor details. What should be considered is the plan as a

whole.—Was it conceived in the public interest? And was it reasonably established to carry out this public interest?

### Public Benefit and Public Use

The court below in its decision states that

> the sole question for decision is whether the property is to be devoted to a public or a private use (33 Fed. Rep. 2nd. 243).

and says further:

> It (the power) is sought to be justified upon the ground of a public benefit amounting to a public use (33 Fed. Rep. 2nd. 244).

The court below rightly recognizes that "this latter question (whether the use is public or private) is somewhat difficult of solution". And because the Court is unable to find any cases which hold that a use such as the city of Cincinnati proposed to make of these properties in the case at bar was a public use, it reaches the conclusion that the proposed use "is not a public use within the meaning of that term as it has heretofore been held to justify the taking of private property."

The fact that the courts have not hitherto held such a taking to be a public use seems to have been a controlling factor with the court below. If such a principle is followed, there can be no progress. The law is a living organism—a flexible instrument to meet human needs. It is not a dead husk taken from the tomb of the past.

The conception of the court below as to what is a public use has been a narrow view and has excluded the conception of public benefit. The learned court has apparently failed to realize that it is essential for the growth and development of a community, for the development of all our cities, that the idea of what is a public use in the taking of land shall be something much broader than has heretofore obtained—shall be the whole purpose of the proceedings. The question is whether or not, having in view all the circumstances of each particular case, the taking of property is reasonable and for a public purpose which is for the benefit of the whole community, socially, economically, financially, including all of them, for the best interests of the very persons whose property is acquired in the proceedings. It is not enough for one particular owner to say "The taking of my parcel is not in and of itself a taking for a public use". The whole proceeding must be taken together, the whole plan considered as a unit with relation to the development of the whole city and the city's best interests.

## The "Recoupment" Theory

The court below enters upon an interesting analysis of what it understands to be the three grounds upon which "Excess Condemnation" rests. The advantages which should accrue in proper cases from the use of "Excess Condemnation" cannot be classified as stated by the court below, in such fashion as to say that in this case the advantage is solely because of replotting or of appropriate restrictions imposed on buildings thereafter to be erected bordering on the new thoroughfare or because there will be financial profit to the city from the sale of such replotted land. There are these advantages. They are all wrapped up, however, in the general economic advantage to the community and in particular to the owners of the land taken in the proceedings. While this discussion is interesting we submit that it has nothing to do with this case.

There is not a word in the Ohio Constitution about "recoupment" which the court below holds to be an invalid reason for the exercise of these powers. The amended Constitution of the State of Ohio contains no statement of the purposes for which this power of "Excess Condemnation" may be exercised other than the broad general statement to the effect that a municipality "may in furtherance of such public use, appropriate or acquire an excess over that actually to be occupied by the improvement, and may sell such excess with such restrictions as shall be appropriate to preserve the improvement made." (Section 10, Article 18 of the Constitution of Ohio.) The Constitution contains not a word with regard to the "recoupment" theory, the "remnant" theory or the "protection" theory, which the court below has so ingeniously devised. There is no purpose declared, no limitation imposed upon the exercise of these powers other than those just stated.

## The Court Substitutes Its Judgment for That of the Local Legislative Body

Furthermore, the ordinance under review discloses no purpose to "recoup" the city for its expenditure but states in express terms that the excess is taken—

> for the more complete enjoyment and preservation of the benefits to accrue from the taking of the 25 foot strip.

It is not for the court to say what will benefit the city of Cincinnati; that is a matter for the local legislative body to determine. It

*has* so determined. The court should not substitute its opinion for that of the local legislative body.

### Nullifying a Constitution

The court below, by substituting its opinion of the purposes for which this property was sought to be taken by the city of Cincinnati and by reading into the Constitution of the State of Ohio language and declaration of purpose that are not to be found there, has nullified the will of the people of an entire State.

### The Significance of This Case

The advent of the automobile has revolutionized the conditions of living in our cities within the space of a few years. It has necessitated a complete restudy and reconsideration of the adequacy of our cities, of the adequacy of our street systems, of our provision of public spaces, of the control of height and bulk of buildings.

Without the use of this power of "Incidental Condemnation" the economic advantages of intelligent replanning of our cities will be minimized, the cost will be burdensome and often prohibitive, the clearance of slums which can be effected cheaply and with permanent benefit will be impossible.

It is for these reasons and because this question is one of great public policy and fraught with vital consequences to the cities of all the states that we have ventured to present these considerations to the court.

---

### A Parallel Case in England

Singularly enough a similar issue has recently been raised in England in connection with slum clearance work in that country in the famous Derby Case (*Rex. v. Minister of Health ex. parte Davis*), and a second case turning on similar issues (*Rex. v. Minister of Health ex. parte Yaffe*).

The English case related to a slum clearance scheme in the city of Derby. Some of the persons whose property it was proposed to take raised the issue that the scheme had no legal status, because, while the Minister of Health had confirmed the Order the preliminary statutory provisions had not been observed, and the purpose to which the property was to be put stated, and that, consequently, the action of the Minister of Health was void and of no effect.

Like the Cincinnati case, in this scheme for slum clearance the local authorities in their resolution taking the property did not state the use to which the property was to be put after it was cleared of its existing insanitary houses. Their resolution simply provided for the acquisition of the area and its clearance, but contained no particulars as to its future use when cleared, leaving the corporation free to sell or lease the land, or to appropriate it for any purpose approved by the Minister of Health.

It is thus seen that while this case did not involve the question of excess condemnation, it is in several respects on all fours with the Cincinnati one—involving the right of a city to sell off property taken by condemnation for a public purpose.

A decision of the High Court was handed down a year ago restraining the Minister of Health from confirming the Scheme, and prohibiting the local authorities from proceeding with it. This decision was appealed to the court of last resort in England, the Court of Appeal, which recently sustained the decision of the lower court and held that the scheme must contain provisions for the future use of the land.

In this case the difficulty was easily overcome, for it was the absence of statutory authority to dispose of the land that the court took exception to. There was no constitutional question involved and no difficulties such as prevail in the United States.

The English situation has been met in the new Government Housing Bill, which proposes to change the law so as to give the local authorities when a slum site is cleared, the power to dispose of the land in any way that seems to be in the public interest.

It is interesting and significant that these two cases, involving somewhat the same issues should arise at about the same time in countries so widely separated.

---

## ZONING AND THE COURTS

## STABILIZING REAL ESTATE VALUES AS A LEGAL BASIS FOR ZONING

### A Notable Decision

A recent decision* of Illinois' highest court, the Supreme Court, sustaining the judgment of the trial court, holds as void and illegal an

* *Michigan-Lake Building Corporation v. Eva H. Hamilton et al. (John F. Cuneo, Appellant) and others v. The Board of Appeals of Chicago. Illinois Supreme Court 20057-8-9; June 20, 1930.*

ordinance slipped through Chicago's Board of Aldermen about a year ago, giving valuable privileges to the owner of a particular piece of property on Michigan Avenue, by changing the height limit for buildings in that city from 264 feet at the building line to 440 feet, with a tower 217 feet above that.

This is the most interesting decision handed down by the courts of this country since the decision of the United States Supreme Court in the Euclid Village case.

The decision holds unusual interest for zoning experts and city planners because of the fact that it is the first decision of the higher courts on which a zoning ordinance is sustained on the ground that it stabilizes real estate values—or, rather, it is a case in which a zoning ordinance is held to be void because it did *not* stabilize real estate values.

When the pioneers in the zoning movement, 15 years ago, wrote that language into the first comprehensive zoning law, the New York statute, it was done deliberately and with a full knowledge and realization of the importance of including those words in any grant of power that enabled a locality to deal with and control its development.

Strangely enough, however, during this whole period of 15 years of zoning there has been no important case decided by the courts where this factor of stabilization of real estate values has been the ground for the court's decision, either one way or the other.

The case before the court arose in an amazing attempt to steal important privileges and permit a building to be built to a height of 440 feet at the building line in place of the limit of 264 feet, which had heretofore prevailed for that section of Chicago.

### An Unsavory Episode

As reported in these columns* an amendment to the zoning ordinance was quietly "kissed through" the Chicago City Council without the public's waking up to what was being attempted. When the spot light of publicity was turned on the proposed ordinance, it was found that what it did was to increase the legal height limit to which buildings could be erected in that city from 264 feet at the building line to 440 feet, and would have permitted a building of a total height of 657 feet on a Michigan Avenue corner.

In response to a storm of protest led largely by the public spirited architects of Chicago, the City Council, which had failed to observe the

* *See "Housing", Vol. 18, No. 4, December, 1929, p. 297.*

requirements of the law in passing the amended ordinance, repealed it and ordered the Building Commissioner to cancel the permit for this building. This was done; but the property owner in question, clung steadfastly to his "mess of pottage," holding that he had received a valid permit from the building authorities to build a building according to the law as it stood at the time that that permit was granted, and that the subsequent repeal of the law in no way interfered with his legal right to complete the building on that basis.

Consequently, he sued out a writ of certiorari before the Circuit Court of Cook County. At the same time two separate writs of certiorari were sued out by neighboring property owners who felt that their property interests were jeopardized by the permission granted to this owner of property to build his building to a height far exceeding that which was permitted to them. The three appeals were heard as one case. The court reversed the decision of the Board of Appeals, which had affirmed the action of the Superintendent of Buildings, in granting a building permit to this owner. From that decision of the trial court, he and the property owners affected, acting separately and on opposite sides of the question, took an appeal to Illinois's highest court, and it is this appeal that has recently been decided.

Reading between the lines of the court's decision, it is quite easy for an intelligent observer to note that the court undoubtedly "smelt a rat" and realized the peculiar atmosphere which had surrounded the granting of this particular permit and the enactment of this extraordinary amendment to the Chicago zoning ordinance. For, the court in its decision, gives a great deal of space and consideration to a recital of the circumstances under which the amendment to the zoning ordinance was enacted.

### Three Important Aspects of Zoning

The court's decision is of great interest to zoning consultants and city planners—for three reasons:

> First, because the basis of its holding this particular ordinance to be void was chiefly on the ground that it adversely affected real estate values in the district in question;
>
> Secondly, because it lays great stress on the fact that the original zoning ordinance was a comprehensive one—resulting from the work of a Commission that took many months to study the situation and prepared an ordinance based on the results of careful study—whereas, it was obvious that the amendment to the ordinance under review was not based on any such study, was not comprehensive, and was not warranted by the conditions that exist in that part of the city.

Thirdly, because it illustrates the wisdom of the Chicago Zoning Law—in this respect following the provisions of the Department of Commerce Standard Act—in permitting owners of property in the neighborhood to intervene in such cases and giving them a status before the court. We have no hestitation in saying that we believe that it was largely because of the effective presentation made by counsel for such property owners that the Court rendered the decision that it has.

In its decision the appellate court recites the grounds on which the trial court had reached its judgment that the amendment to the ordinance was void and illegal and summarizes these as follows:

That the ordinance is illegal as giving to administrative officers legislative powers;

That the amendatory ordinance is invalid because in violation of the powers granted to the city council by section 1 of the statute known as the zoning act;

That the amending ordinance is invalid because it is inconsistent with the original comprehensive zoning ordinance of 1923, and permits arbitrary, inharmonious and preferred situations to be established, and gives special privileges, special freedom from maximum height and volume restrictions provided by the 1923 zoning ordinance without just cause, and which preferred situations or locations are, or will be, flagrantly inconsistent with the harmony and agreed necessities of the original 1923 zoning plan, modifying it as particular spots or locations without general or systematic adjustment;

That the amendment included properties not so different in situation from others or sufficient in number to constitute a class;

That the ordinance is unreasonable as to classification and is an arbitrary or irrational exercise of power having no substantial relation to the public welfare, and constitutes giving a special, arbitrary and unreasonable privilege without just cause, contrary to the provisions of the Fourteenth Amendment to the Federal Constitution.

To the legal questions raised by counsel to the effect that the trial court had no jurisdiction under a writ of certiorari to review the decision of the Board of Appeals, or to pass upon the constitutionality of the ordinance, the appellate court says:

The zoning act authorizes municipalities to exercise what might be said to be extraordinary supervision over, and to place unusual restrictions or limitations upon, the property of its citizens by virtue of the police power. There is no valid reason or policy to which our attention has been directed for not permitting courts, under certiorari proceedings, to decide the validity or constitutionality of a zoning ordinance, which is the sole authority under which the zoning Board of Appeals has rendered its decision.

## The Right of the Public to Intervene

On the question of the right of neighboring property owners to intervene the court has the following significant comment to make:

Appellees here are the owners of property located in the same neighborhood as the property of appellant, but they are not permitted under the amendatory ordinance to construct, as appellant is, a building having a street line height of 440 feet. In our opinion appellees were aggrieved parties within the meaning of the zoning statute, and were authorized, in accordance with its provisions, to question the validity of the building permit issued to appellant and to attack the validity of the amendatory ordinance by virtue of which the permit was issued. Ayer v. Cram, 136 N. E. (Mass.) 338.

On the point raised by the trial court that the amending ordinance was not based on a comprehensive study such as the original ordinance was based upon, the appellate court says:

> The statute, we think, contemplates the same careful, serious and intelligent consideration of an amendment to a zoning ordinance as is required in the preparation and enactment of an original ordinance on zoning.

## Stabilizing Property Values

The chief point on which the appellate court based its decision holding the amendatory ordinance to be void was because of the fact that it did not make proper allowance for the conservation of existing property values.

In view of the importance of the court's decision and of the fact that this is the first important case in the higher courts where this basis for a zoning ordinance has been considered, we quote at some length from the court's opinion on this point.

The court has the following to say here:

> Some of the necessary requirements in the consideration and enactment of a zoning ordinance are that due allowance shall be made for existing conditions, for the conservation of property values, for the direction of building development to the best advantage of the entire city, and for the uses to which property is devoted at the time of the enactment of the ordinance.
>
> Among the many witnesses who testified on the hearings were several real estate men of recognized ability and experience in the handling, appraisal and valuation of "loop", or down-town, business property in Chicago. No useful purpose would be served in setting forth this testimony in detail.

The substance of it was

> That between the years 1893 and 1923 the ordinance street height limit of buildings in the City of Chicago changed and fluctuated to some extent from 130 feet to 264 feet;
>
> That during a part of that period, at least, there was some difficulty in the building developments and activities in the downtown business district;
>
> That the passage of the zoning act of 1923 establishing a street line height limit of 264 feet in the Fifth Volume district stabilized real estate values and rentals in the volume district thereby making it possible to finance and develop business buildings with the knowledge on the part of both owners and bankers, or financial agents, that such buildings could be rented and administered on a fair return on the invested capital;
>
> That since the zoning act of 1923 was passed between 60 and 70 business buildings had been constructed under its Height and Volume provisions and regulations and at a cost of more than $300,000,000;
>
> That there was no reason nor necessity for increasing the street line height limit in the Fifth Volume district because no new conditions had arisen calling for a change in the recently established height limit;
>
> That the effect of the amendatory ordinance would be to disturb the taxable values of land and property in the downtown business district, would unsettle values and building conditions and developments therein;

And that buildings erected under it to a 440-foot street line height would have a prejudicial effect upon a large differential renting advantage over surrounding or other business property which is limited and restricted to a street line height of 264 feet.

After reciting the peculiar circumstances under which the ordinance was passed and the influences behind it—which the court evidently fully appreciated—the court goes on to say:

### Action Only After Comprehensive Study

Having in mind the provisions of the zoning act previously quoted, we are much impressed with the language used by the trial judge in his decision.

He stated:—

If some change had been made after the lapse of six years that was reasonable, the courts in all probability would not feel justified in overriding the judgment of the city council in such a matter of administrative policy; but when, however, as shown by the evidence, the change which was made was actually so radical and revolutionary as to shock the reason of those most familiar with and having the completest knowledge of the normal necessities and requirements and conditions of building in the Fifth Volume district, and when, as shown by the evidence, the amendment would permit buildings of such a height and volume as would in an economic way greatly disturb and render precarious vast property interests in the Fifth Volume district, and without reason flout the statutory command of conservation of property values, it then becomes the duty of the court to halt the action of the city council and to hold the amendment invalid as in violation of the statute.

The values of buildings put up within the last six years may not legally be unreasonably impaired by a sudden sweeping change made by the city council under the guise of zoning. That would not be "the conservation of property values," but *ex post facto* confiscation of property rights without compensation.

Although no mind is acute and comprehensive and prophetic enough accurately and with certainty to appraise today the ultimate and total effect of such a radical change in the law from a maximum of 264 to 440 feet, and although there is no *a priori* test or rule for the determination of an ideal height and volume, the conclusion from all the evidence seems quite irresistible that the amendment in question must be condemned and held to be in violation of the zoning statute.

The court says further:

However, in the instant case there appears to have been no consideration given or allowance made for existing conditions, for the conservation of property values, or for the direction of building development to the best advantage of the entire city.

### Special Privileges Frowned Upon

The court adds:

It is not the purpose of the zoning act to permit special privileges to any one or to a few property owners. In the many adjudicated cases wherein zoning statutes or ordinances have been approved the courts have stated in substance that zoning necessarily involves a consideration of the municipality or community as a whole and a comprehensive view of its needs.

Any regulation or restriction placed upon property by virtue of the police power granted under a zoning statute must be impartially

applied as to all properties similarly situated. The few properties here affected under the amendatory ordinance are not so differently situated as regards surrounding open spaces, light, air, safety, congestion, and other matters pertaining to the public welfare as to warrant establishing these properties as a class and give them freedom from restriction, whereby the street line height of buildings erected thereon might be 66⅔% higher than that which all other properties in the same Volume District might have.

Zoning experts and city planners will find it advantageous to study the full text of this important decision.

## ZONING CASES IN THE UNITED STATES*

A long awaited and much needed digest of leading cases decided by the courts on the subject of zoning is to be found in this volume by Edward M. Bassett and Frank B. Williams, two of the country's leading authorities in this field, published a year ago by the Regional Plan of New York, in the form of a 60 page book, in which the more important of the decisions of the courts of the country have been grouped topically with regard to the subject matter which they affect, under such heads as the following: Advertising; Aesthetics; Billboards; Board of Appeals; Building Lines; Business District; Definitions; Density of Population; Eminent Domain Zoning; Fire Hazard, Traffic, etc.

In a brief preface, the authors state the purpose of the compilation in the following terms:

> In the following table an effort has been made to include all cases appearing before March 1, 1928, dealing with the problems arising with relation to systematic and complete zoning ordinances for an entire governmental unit covering height, or area, or use, or two or more of them. There are also included cases with regard to partial and interim ordinances, challenged for lack of such completeness.
>
> In addition the table gives many cases with regard to "consent" zoning, nuisances and the scope of the police power, which seem significant in zoning. Obviously it was impossible to include all such cases without wandering too far from the purpose of this table.

Every city attorney and corporation counsel throughout the country as well as all zoning practitioners will find it not only desirable but essential to have this armory of decisions to aid them in supporting zoning ordinances when under attack.

In addition to this listing of cases according to their topical interest, the publication also contains an index of cases by states

---

** Zoning Cases in the United States by Edward M. Bassett and Frank B. Williams. Regional Plan of New York and its Environs. 130 East 22nd Street. N. Y. C. 1928. 60 pp. Price $2.*

according to the title of each case, and in addition an alphabetical index of cases by their titles.

## A NEW DEPARTURE IN ZONING

### Banishing Business from Residence Districts

When the zoning movement first emerged in this country, those advocating zoning were confronted with the necessity of deciding whether they should move to disturb existing conditions in a given neighborhood or should limit their efforts to safeguarding the community in the future. It was the view at that time that disturbing existing conditions would raise very serious legal questions and might in many cases work great hardship—and was quite likely to result in great friction and in opposition to zoning.

They had before them at the time some of the earlier attempts to control residential districts in California prior to the adoption of any comprehensive scheme of zoning in any part of the country. These efforts were found in two cases rather famous at that time, one involving a brick yard and the other involving a Chinese laundry, the famous cases of *Hadachek* and *Quong Wo.*

At that time—and it was 15 years ago and before the days of zoning—the city of Los Angeles had enacted an ordinance establishing residential districts in which in future no business could be established and compelling all existing businesses to be discontinued and removed. In one of these districts there was a brick yard. And, although the owner of the property was able to prove to the satisfaction of the courts that his property was far more valuable as a brick yard than it would be for residential purposes, the courts sustained the ordinance and compelled the discontinuance of the brick yard.

Similarly with regard to a Chinese laundry in the *Quong Wo* case, the ordinance required the discontinuance of an existing laundry in a residential district. And although the owners of the laundry resisted and took the case to the courts, the courts sustained the ordinance as a legitimate exercise of the police power.

Notwithstanding these two decisions, the leaders of the zoning movement—very wisely we think—refrained from advocating carrying zoning to this degree.

This glance backward into the past of zoning is occasioned by two decisions handed down recently by the highest court of Louisiana, the Supreme Court of that state, involving similar questions. *State ex rel. Dema Realty Co. v. McDonald, 121 So. 613; State ex rel. Dema Realty Co. v. Jacoby, 123 So. 314.*

In these two cases Louisiana's highest court has sustained provisions of the zoning ordinance of the city of New Orleans which not only prohibited in future any business use in a residential district, but went so far as to outlaw all existing business uses in those districts and required existing businesses to be liquidated within one year from the passage of the ordinance. This is further than the court of any other state has gone or than any zoning ordinance has gone since the first early days of the beginnings of the zoning movement in California already referred to.

### Non Compliance With Law Is a Nuisance

In its decision the Court, after reviewing its own earlier decisions in zoning cases, notably the *Civello* case and the *Liberty Shop* case—both New Orleans cases, and both cases where the question of the maintenance of a store in a residence district turned upon whether it might be deemed a nuisance or not—very strongly sustained the present ordinance, holding that *the continuance of a use forbidden by law after the time permitted by law is a public nuisance,* whether specifically so declared or not.

On this point the court says:

> We take it to be well settled that any business operated or maintained in violation or in defiance of a zoning ordinance is to be regarded as a public or common nuisance.

If the courts throughout the country take a similar view, it would seem as if a new weapon had been forged with which to contend against the evils of unplanned and ill considered city development.

An interesting side issue discussed in this case which has interest for all city planners and persons interested in zoning and housing reform, is the question that was raised as to the right of an affected property owner to bring proceedings to have the law enforced, in the light of the failure of the city authorities to act.

It was this question that chiefly interested the court in these two cases. This is not strange, as the court had already passed upon the other issue involved in the *Civello* and *Liberty Shop* cases.

### The Right of a Citizen to Enforce the Law

Discussing this question as to the right of a private property owner to bring proceedings to have the law enforced, the court held that it hinged on whether the nuisance is both a public and a private nuisance, or is only a private nuisance.

In reviewing the nature of the two kinds of nuisances the court says:

> It is not the number who suffer which constitutes an exclusive test, but the nature of the right affected which determines whether private or public action will lie; for the fact that numbers are injured does not make the nuisance such a common one as to exclude redress by private remedy from a single individual.

And again:

> The doctrine that a nuisance may be both public and private has been repeatedly recognized in the jurisprudence of this state.

### Depreciation of Property Values a Valid Argument

In addition to these two important points there were other questions raised which the court decided in a fashion that will greatly strengthen the hands of city planners and zoning experts throughout the country. One of the points stressed by the private property owner who brought the action was that the value of his property was depreciated by the presence of the grocery store and drug store in this residential neighborhood. The court held this to be a proper cause of action and cited its similar holding in the earlier Civello case, on this point saying in the present instance:

> Among them we stated that property brings a better price in a residence neighborhood where business establishments are excluded than in a residence neighborhood where an objectionable business is apt to be established at any time.

Much was made, of course, of the hardship involved in compelling the owner of an existing business to liquidate his business within a year, the appellant in these cases raising the contention that such a requirement was unconstitutional as being both arbitrary and unreasonable, and that it amounted to a taking of their property without due process of law. On this point the court brushed aside all legal cobwebs and got to the heart of the matter with refreshing common sense, saying:

> There is nothing to show the extent or volume of business done by the defendant. For all that appears, the business may be a small retail grocery business located in an outlying section far removed from the business center of the city. The defendants have not shown, and the court is not able to conjecture any substantial reason why such a business could not be liquidated and closed out within a year.

### The Courts Will Not Interfere With Legislative Matters

Finally the court concludes its findings with a splendid reiteration of the principle, which it has adhered to in earlier zoning cases, of

leaving to the legislative authorities the determination of matters which concern them, and adhering to their own judicial responsibilities, saying in conclusion:

> The matter is left to the sound judgment and discretion of the municipal authorities, and this discretion will not be interfered with by the courts, unless its exercise is found to be manifestly and palpably hostile and unreasonable.

It is indeed a far cry from the decision in the Nutley case to this decision of the Louisiana courts.

## AGAIN THE LAWLESS BOARD OF APPEALS

### In New York City

We have repeatedly in these columns called attention to the increasing findings by the highest courts of various states condemning the lawless acts of Boards of Zoning Appeals, which, notwithstanding these decisions and this rebuke by the courts, seem to go on their merry way—a law unto themselves.

A recent instance in which the higher courts call attention to lawless acts of the Board of Standards and Appeals of New York City is to be found in a decision of the Appellate Division, First Department, *Riker et al v. Board of Standards and Appeals of the City of New York, 234 N. Y. Supp. 42.*

In this case, involving the use for business purposes of property in a residential district in the neighborhood of Park Avenue and 40th Street, the Board of Standards and Appeals of New York City rescinded and set aside its own ruling and determination while the case was in the courts.

The case being taken to the higher courts, the Appellate Division of the First Department in a decision rendered last April had the following to say of these lawless acts of the New York Board:

> We conclude that the rescission and setting aside of its former decision by the Board of Standards and Appeals was unauthorized and void. The function of that board is a quasi-judicial one, and it is not empowered to review its own decision by vacating or rescinding or altering it when made, and besides the certiorari order of the Supreme Court had removed the whole proceeding to its jurisdiction and the power of the Board of Standards and Appeals had thereby been terminated.
>
> This reopening of the appeal from the superintendent of buildings which the board had once decided and their determination upon such reopening was absolutely void. No section of the statute defining the board's powers gives it any authority so to act as to effect a review or rescission of its own prior decision, except when additional facts are presented. The jurisdiction of the board by its statutory mandate is limited to hearing and determining appeals. When quasi-judicial bodies act under their granted powers, their determination is final unless reversed by a superior body.

We are again inclined to ask with Cicero "How long wilt thou abuse our patience?"

## OTHER LAWLESS BOARDS OF APPEALS

While the eyes of the country have been focused upon the New York Board of Standards and Appeals with its scandals and the indictment of its Chairman by federal and state grand juries, the defects and dangers of such boards are by no means limited simply to New York City nor solely to the dangers of favoritism and graft inherent in such boards.

There is an increasing tendency on the part of these boards to become lawless—if one can judge from the decisions of the higher courts throughout the country. It is not surprising that this should be so; for, most boards of zoning appeals are so constituted that lawlessness is encouraged. In the first place they have been created to set aside the law. They naturally soon lose respect for laws which they themselves are declared to be superior to. In addition, few such boards are so constituted that their members can be held accountable for their actions. Once appointed they are responsible to no one. Acting as a group such responsibility as they have becomes divided and cannot be fixed. It is not surprising, therefore, that such boards should be given to graft and favoritism and should tend to become lawless.

That the time has come for dealing resolutely with this situation, must be apparent to all persons interested in zoning, for the decisions of the higher courts pointing out the lawless acts of such boards are piling up.

Such a decision was handed down by Massachusetts' court of last resort, the Supreme Judicial Court of that state, about a year ago. *Bennett v. Board of Appeal of City of Cambridge, 167 N. E. 659.*

It appears that a property owner in the city of Cambridge whose land was located in a residential district, sought permission from the building authorities for the erection of a garage in which a number of automobiles were to be housed. Under the terms of the ordinance, no garage containing more than 2 cars was permitted in the district in question. He was denied a permit by the Building Inspector on this ground; whereupon, he appealed to the Board of Zoning Appeals for permission to erect a garage containing 140 cars. After a hearing on this application the Board of Appeals granted it and varied the terms of the law so as to permit it in his case.

Mr. Justice Rugg, Chief Justice of the Supreme Judicial Court, in his decision points out that the Cambridge Zoning ordinance provides that no garage such as was involved in this case could be constructed, except after the filing of written consent of the owners of 75% of the area of the private property within 500 feet of the lot on which the garage is proposed to be erected. In addition to this specific requirement, it appears that the statute was amended recently by the Massachusetts legislature, prescribing the limits within which Boards of Appeals might vary the application of zoning ordinances. In so doing they limited the powers of such Board to cases where the enforcement of the ordinance, "would involve practical difficulty or unnecessary hardship and *wherein desirable relief may be granted without substantially derogating from the interest or purpose of such bylaw or ordinance, but not otherwise.*"

As the court points out in the case at bar, the only way in which the land owner could erect the building desired was by procuring the written consents there specified as a condition precedent to favorable action by the Board of Appeals.

The court comments on the fact that "the record of the respondent board shows nothing with respect to section 15 of the ordinance. There is no decision that its application ought to be varied in the public interests."

Just how this evil of lawless boards of appeals is to be dealt with, is not evident, but that it must be dealt with soon is quite apparent.

## VARIANCE POWERS OF BOARDS OF ZONING APPEALS AGAIN

In view of the interest that there is at the present time with regard to the powers of Boards of Zoning Appeals, not only among zoning experts and city planners, but on the part of the public generally—an interest quickened, perhaps, by the scandals that have recently been ventilated in New York City under which indictments have been found against the Chairman of the local board in that city, as well as against certain practitioners appearing before that Board—a decision of the higher courts of other states bearing upon this important question of the extent and limitation of the powers of Zoning Boards of Adjustment has naturally great interest.

One of the interesting cases recently decided arose in North Dakota in the city of Minot. That city had been zoned and certain districts

established in which only private residences were permitted and apartment houses were excluded. A property owner, wishing to build an apartment house upon her property which was located in a private residence district, sought a permit from the Building Inspector who denied it on the ground that the zoning ordinance forbade that kind of a building in that district. The property owner promptly took an appeal to the Board of Zoning Adjustment which sustained the decision of the Building Inspector. From this an appeal was taken to the District Court and from the decision of that court to the highest court of the state, the Supreme Court of North Dakota.

That court in a decision handed down a few months ago, *Livingston v. Peterson, 228 N. W. 816,* while declining to review the action of the Board of Adjustment—which was properly constituted and had proceeded according to law—took this occasion to express certain definite views with regard to the so-called variance powers of such Boards which have interest for the entire country.

To the claim of counsel for the property owner that the Board of Adjustment should have varied the law so as to permit the erection of an apartment house in a private residential district, the court has the following to say

> To permit variance would result in discrimination in her favor, and render the ordinance nugatory, for under so-called "proper conditions", the Building Inspector and the Board of Adjustment could set aside all provisions of the ordinance.

And further

> To permit the board of adjustment to authorize the erection of a building specifically forbidden would be authorizing the board to amend, repeal, or suspend a provision of the ordinance, thus conferring upon it legislative power. It would be giving to the board the arbitrary power of determining whether certain specific provisions should be enforced, thus permitting discrimination. It would permit the board in its discretion to annul and vary the ordinance itself, instead of confining it to the application of regulatory provisions. This would raise a constitutional question of grave importance, for it is held that delegating legislative power would render that portion of the ordinance, if not the entire ordinance, invalid. See *City of Des Moines v. Manhattan Oil Co., 193 Iowa, 1096, 184 N. W. 823, 188 W. 921, 23 A. L. R. 1322.* The city commission is the legislative body enacting the ordinance. The right of the petitioner to erect an apartment house cannot rest upon the whim, the opinion, or the decision of the board of adjustment, any more than it can rest upon the consent of residents within the district.
>
> To permit a board or committee appointed by the city commission to say that a building forbidden to be erected may be erected, if this committee deem it wise, is as much a delegation of legislative power as would be permitting property owners to say that certain improvements

must be made, or cannot be made. In either case the legislation would be made by those outside the legislative body. See *Morton v. Holes, 17 N. D. 154, 158, 115 N. W. 256; State of Washington ex rel. Seattle Trust Co. v. Roberge, 278 U. S. 116, 49 S. Ct. 50, 73 L. Ed. 210.* The ordinance must determine this matter, and not the board. For this reason it is clear that, where the board is given power to vary regulations, so as to apply them in harmony with the general purpose and intent of the ordinance and the law, it merely refers to regulations such as the distance which a church or school may be built from the rear of the lot, whether living, sleeping, or working rooms may be ventilated by an approved mechanical system, rather than by windows, whether churches or hospitals may exceed height restrictions of the district, and other provisions found in sections 9 and 10 of the ordinance. It cannot be extended to permit the building inspector or the board of adjustment to amend the ordinance, so as to authorize the erection of a building which is forbidden by the ordinance.

Incidentally, one of the interesting legal questions involved in this case was whether on *certiorari* the courts could review anything other than the record. In striking contrast with the recent decision of the Illinois Supreme Court reported elsewhere in these columns*, North Dakota's Supreme Court holds that "certiorari merely reviews the record. It does not review the evidence".

From this decision and numerous others that have been handed down in recent months in all parts of the country it is quite evident that the time is approaching when very serious consideration should be given to a new point of view with regard to the powers of boards of zoning adjustment, with very serious curtailment of those powers.

## A PROPER WAY TO RESTRICT THE POWERS OF BOARDS OF ZONING APPEALS

That difficult question of how to give a board of zoning appeals the power necessary to enable it to fulfill its functions and have available a quick and easy means of redress for possible hardships in the application of a zoning ordinance, seems likely to be met if the principles that have been laid down by the court of last resort of the State of Rhode Island, the Supreme Court of that State, in a case before it about a year ago, *Heffernan v. Zoning Board of Review of City of Cranston, 144 Atl. 674,* are generally adopted in other jurisdictions.

In considering on review under certiorari the action of the Board of Zoning Appeals of the city of Cranston which had denied the appli-

* *See page 214.*

cation of a property owner to vary the law and permit the erection of a business building in a district that under the zoning ordinance was classified as residential—the Rhode Island court laid down a principle for its guidance in such matters which it seems to us affords a sound basis for properly restricting the powers of boards of zoning appeals in other parts of the country.

It appears that under the zoning ordinance of Cranston the power to vary the application of the terms of the zoning ordinance is limited to those cases that "will not be contrary to the public interest", as well as to those that will prevent unnecessary hardship.

This language seems to us to furnish an element in the functioning of boards of zoning appeals that is greatly needed.

Instead of merely having a broad unlimited power to vary the ordinance whenever a petitioner desires it—for every petitioner can easily allege unnecessary hardship—there is here imposed upon boards of zoning appeals the necessity of finding that the proposed variance shall *not* be *"contrary to public interests."*

This seems to us a very wise safeguarding of the great powers that are granted to such boards.

Construing these words, the Rhode Island Supreme Court interpreted them as follows:

> In this connection, the words "contrary to the public interest" should be interpreted to mean what in the judgment of a reasonable man would unduly and in a marked degree conflict with the ordinance provisions.

And the court goes on to say:

> In appealing to the discretion of the Board of Review for a variance of the provisions of the ordinance, the burden was upon the petitioner to satisfy the judgment of the Board that such variance would not be unduly in conflict with the public interest as expressed in the ordinance.

It is thus seen that a new element is presented for the guidance and limitation of the action of boards of zoning appeals in varying the provisions of a zoning ordinance. This seems to us a most valuable provision—putting the burden of proof upon the petitioner to show affirmatively that the proposed variance would not be unduly in conflict with the public interest, as expressed in the ordinance, and making the Board of Review satisfy itself and establish on the record that the action proposed will not have that effect.

## CITY PLANNING OF THE FUTURE

How ineffective most of the city plans that are being made at the present time may be in a few years and how out-moded it may all seem is brought home to city planners by perusal of a recent report issued by the Regional Planning Federation of the Philadelphia Tri-State District on the subject of Airways and Airports. In a 32-page pamphlet, most attractively printed, the whole subject is discussed with great wisdom and skill, particular emphasis being placed upon the importance of ground organization, the pamphlet pointing out that that phase of the problem may be said to be 90% of the air transportation problem, and that adequate ground facilities must be planned now to accommodate the aerial traffic of the future.

Every city planner will need to study this report if he is to keep up with his profession. Copies of the Report can be obtained at the offices of the Federation, 1700 Fox Building, Philadelphia.

## A DANIEL COME TO JUDGMENT

### In Minnesota

It is an old saying that "hard cases make bad law". But this saying will have to be revised if the courts of the country continue to take the view of their functions that has been taken more and more—notably by the federal courts and by many state courts of last resort—that they will not substitute their judgment for that of the legislative bodies who are charged with responsibility when they enact laws under the police power.

A striking illustration of this—and a model of propriety as to their attitude for all the courts of the country—will be found in a decision handed down about a year ago, by the U. S. Circuit Court of Appeals of the 8th Circuit, written by Mr. Justice Kenyon, and concurred in by his associates, *American Wood Products Company et al.* v. *the City of Minneapolis.*

This decision affected 4 zoning cases in the city of Minneapolis under the Minneapolis Zoning Law. They all involved the question of the validity of a provision of that ordinance which forbade the building of factory buildings, or their extension, in a district that had been set aside as a "Multiple Dwelling" area.

Although there were real elements of hardship involved in at least one of the cases before the court, the court refused to be swayed by that fact, saying on that point:

In spite of the fact that I think that the city has dealt unjustly with these complainants, and particularly the American Wood Products Company and the Northwestern Feed Company, who had improved their property long prior to the going into effect of this ordinance, and who had no doubt helped to build up the section of the city in question, I cannot say that it is "plain and palpable" that the restrictions placed upon the use of their property by the city "has no real or substantial relation to the public health, safety, morals, or to the general welfare", or that "the validity of the legislative classification for zoning purposes" is not "fairly debatable".

## The Issues Involved

The appellate court, quoting from the decision of the trial court, thus expresses the issues involved. The argument for appellant runs as follows:

That some of the complainants had erected buildings on the properties, relying on an ordinance which did not prevent their operating the properties as "light industrial";

That their properties are greatly diminished in value by the operation of the zoning ordinance;

That while these properties are zoned as "multiple dwelling", some of the property on the same side of the spur track and similar property on the other side are zoned as "light industrial";

That just across the spur track, and coming under the designation of "light industrial" is the property of the W. H. Barber Company, whose business is buying and selling oils and glues which are stored on the premises;

That the property on one side of the railroad is as good as that on the other for use for industrial purposes;

That to make desirable residence lots of property near the property in question would require removal of the spur track;

That the planning commission of the city of Minneapolis originally recommended to the city council that the property of complainants be zoned as "light industrial", and that such course would have been followed had it not been for the action of the board of regents of the State University of Minnesota insisting that this property would be needed for the residential needs of the university in the future.

The court says:

The other side of the argument is that the residential district adjacent to these properties will be affected by the noises, dirt and confusion that arise from the operation of the American Wood Products plant, and the handling of grains by the Northwestern Feed Company; that the Lyle Culvert and Road Equipment Company contemplate the operation of machine shops with the attendant noises produced by riveting, motors, hammering and other irritants calculated to fray the nerves of the residents of the community.

### The Courts Must Not Usurp the Function of Legislative Bodies

Discussing the main questions involved as to whether the law was invalid because it had no relation to the police power of the State and was so unreasonable and arbitrary that it violates the federal constitution, the court has the following to say:

> We turn to the other and controlling question here, namely: Was the zoning ordinance such an unreasonable and arbitrary exercise of the police power that it deprived appellants of their property without due process of law, and denied to them the equal protection of the law? There is little remaining to be said as to the law, in view of the numerous decisions of the supreme court dealing with every phase of the question. The law is clear—its applicability to various circumstances and to situations brought about by the complexity of our civilization is ofttimes difficult. The general tendency of the courts is to uphold reasonable zoning ordinances that have a substantial relationship to the protection of public safety, health, morals or general welfare. They are a matter of comparatively recent growth, made necessary by the tremendous industrial and business development of the country. The people of cities are entitled to some protection for their homes against the continual aggressions of business and from the conglomeration of nerve-destroying noises incidental to industrial development—hence residential districts are established where people may have a reasonably quiet home life.
>
> The governing bodies clothed with authority to determine residential and industrial districts in cities are better qualified because of their knowledge of the situation to act upon these matters than are the courts, and they should not be interfered with in the exercise of their police power to accomplish the desired end, unless under the guise of police power there is a plain violation of the constitutional rights of citizens.

Again the court says:

> So the real question here, in view of these decisions, is whether the restriction imposed by the zoning ordinance as applied to the particular situation of each separate piece of property involved in the different causes bears any substantial relation to the public health, the public morals, the public safety, or the public welfare in its proper sense.
>
> The trial court was of the opinion that the value of the property of the various complainants for industrial purposes is from five to eight times as much as it would be for dwelling purposes, because the tracks of the Milwaukee Railway Co., while an advantage to industry, are a detriment to residences, and affect materially the value of such property for residence purposes.

### The Burden of Proof On Those Attacking Zoning Laws

As indicative of the proper attitude of the court in recognizing the limitations of the judicial function and not invading the field of the legislative body, we cite the following from this opinion:

> Can a court say that there is absolutely no reasonable basis for a zoning ordinance designating the properties of appellants as "multiple dwelling", and that therefore the ordinance is so arbitrary and unreasonable as to them as to deprive them of the equal protection of the laws and to amount to the taking of their property in violation of the Fourteenth Amendment to the Constitution? It would seem fairly to be a debatable proposition. Therefore, it seems to us that in the condition of this record the judgment of the trial court must be affirmed, for certainly the burden was on complainants to show that this ordinance rests on no reasonable basis. We do not see that they have offered any substantial evidence on this subject. They did not show that what they propose to do will not seriously affect the health, safety and general welfare of the people occupying surrounding property within the district. And that burden was upon them, as, certainly, there must be some presumption that the action of the city council in passing the ordinance was in the general public interest and for the promotion of the public welfare.

The decision concludes as follows:

> While the federal courts should not permit destruction of private property under the pretense of police power, and should not hesitate to condemn the erratic exercise thereof, resulting in depriving parties of constitutional rights, they should be equally careful not to interfere with that reserved power of the States properly exercised for the general welfare. The trial court held that it was not plain or palpable that the restrictions placed upon the uses of these properties by the city had no real or substantial relation to the public health, safety, morals or general welfare; that the subject was fairly debatable, and that consequently the ordinance should be sustained. We think its decision correct.

We commend this model opinion and attitude of the court to the courts of the country.

## MAY STREETS BE WIDENED FOR PARKING PURPOSES?

It is said that the chief occupation of the people of America is looking for a place to park the car. Whether this be true or not, there can be no question that the problem of parking and the space that is taken up in our city streets by parked cars is one that is giving more concern to municipal authorities and to city planners than almost any other current question.

How this problem is to be solved is hard to say. One thing is certain, no city can make streets wide enough to take care of the traffic resulting where every family in that city has not only one motor car but often two.

Where there is a comparatively limited number of automobiles, parking such cars along the curb does little harm and is something

that can be permitted, but where hundreds of thousands of people are using the streets of great cities—many of them all at the same time and in parts of the city where buildings are highly concentrated and a vast population is attracted—it becomes evident that such use of the streets can no longer be tolerated.

There is very little to be found in legal precedents thus far in this country on this question; for, naturally, in horse and buggy days the question hardly arose.

City planners, therefore, will find of considerable interest a decision handed down by Michigan's court of last resort some months ago in a case arising in the city of Grand Rapids and involving this question of the right to use the city streets for parking purposes. The case arose in connection with a street widening proceeding in that city, *City of Grand Rapids vs. Barth, 226 N. W. 690.* The city proposed to widen one of its main thoroughfares by taking a 16-foot strip of land on one side of it and after the widening to reserve a parking lane on each side of the widened street.

Some of the property owners who did not wish their property taken contended that the city did not have the power to take their property to widen the street and thus provide a parking space when by prohibiting or limiting parking the present thoroughfare would be wide enough to accommodate street traffic.

Discussing this point the court said:

> We have been unable like the city to find any direct decision on the question of whether the public can condemn private property for parking space only. * * * We respectfully submit that as a matter of law this right should not and does not exist.

The court goes on to say, however, that the absence of adjudicated cases on this point does not render the rule of law obscure or doubtful, and adds

> From the day of the ox cart there have been maintained in the public highways hitching posts and rails by which provision was made for the leaving of animal-drawn vehicles at proper places on public thoroughfares. The demand of our motor age has greatly increased the necessity for space in the public streets for leaving vehicles. This right is of importance to the tradesmen along the street as well as to the traveler thereon. One would hardly have the temerity to question that such a use is a lawful use of the highway. Its regulation is a matter for the exercise of the police power, with which in the absence of abuse courts should not interfere. In the future this space which the city seeks to add to Fulton street may or may not be used for parking. The land was taken "for street purposes." But parking is a proper use of the highway, and if necessity therefor exists the right of eminent domain may be exercised to establish or widen highways adequate for this purpose.

From which it appears that Michigan's highest court, at any rate, conceives parking to be a proper and legitimate use for public highways.

## THE OBJECTIONS TO INDUSTRIES IN RESIDENTIAL DISTRICTS

Zoning consultants and city planners who have to defend in the courts provisions of zoning ordinances that exclude objectionable industries from residential districts will find most valuable material in a zoning case that arose in St. Louis not long ago.

In this case the property owner who did not wish the quiet of the residence district in which he lived interfered with by the operation of an ice plant contended that its location in that district was objectionable.

Although the state's highest court decided adversely to the contention of this property owner and permitted the operation of the ice plant in question, it in no way detracts from the appropriateness and adequacy of the presentation made as to the detrimental effects of such industries in residential districts nor from its value as a standard or model for similar proceedings in other parts of the country. It is quite evident from reading between the lines of the court's decision that there were other elements in the case than the mere questions of law presented. *Aufderheide v. Polar Wave Ice & Fuel Co. 4 S. W. 776.*

The statement of how such industries operate to the detriment of residential districts is so valuable that it should serve in similar cases not merely of ice plants but of other industries—in all parts of the country.

We give it in part:

> Not more than 60 feet distant from said residences of these plaintiffs, the defendant is now proceeding to erect and construct thereon a large brick building to be used by it for the purpose of manufacturing, storing and selling ice therein and therefrom; * * *
>
> That defendant intends to use the remainder of said lot for the erection of stables, garages, wood sheds and coal bins to house its motortrucks, ice and coal wagons, mules and horses to be used in said business and for the storage therein of wood and coal to be bought and sold by it;
>
> That the successful manufacture of ice in said plant will necessarily require its operation during all hours of the night, and defendant intends to so operate the same;
>
> That the sale of ice therefrom cannot be successfully carried on except in the late hours of the night and the early hours of the morning and the defendant intends to so conduct said business;
>
> That the maintenance and operation of said plant will daily—and especially during the late hours of the night and early hours of the morning—bring to and around said premises and into said neighborhood large numbers of noisy motortrucks and animal-drawn wagons

and large numbers of boisterous and noisy ice and fuel vendors, peddlers, teamsters, and chauffeurs, by reason of which there will be created in and around said premises during said hours loud and disturbing noises and disorder and loud, profane, and vulgar language which will be heard throughout said neighborhood;

That in the manufacture of ice in said plant large quantities of ammonia will necessarily be used from which fumes and vapors will escape into the air and diffuse themselves through the neighborhood, greatly injuring and destroying the vegetation growing upon the premises of plaintiffs and along the sidewalks of said neighborhood;

That the process of manufacture of ice which defendant has planned and intends to use in said plant contemplates the construction of a cooling system on or near the top of said building, and from 35 to 50 feet above the street, which will consist of a large number of coils of iron pipe 2 or 3 inches in diameter, the length and number of which are unknown to plaintiffs, over which a constant flow of water will be maintained day and night that will fall through the open air, some 10 or 20 feet to a receptacle beneath;

That said cooling system will be so constructed as to be exposed to the wind from at least three cardinal points of the compass, and as said water flows over said coils and breaks into small particles, a slight wind will cause it to form into mists and to be carried from said plant onto the premises of the plaintiffs, injuring their property and impairing their use and enjoyment thereof;

That in making ice in the manner planned by defendant a large number of metal containers of varying sizes will be used in which water will be frozen, and which must be emptied every night in order to remove the ice therefrom, and in handling said metal containers in the early hours of the morning it will be impossible to do so without making great and loud noises, which will be heard throughout the neighborhood;

That the maintenance of horses and mules on said premises, necessary in conducting said business, will necessarily produce large quantities of manure and refuse matter, drawing flies and emitting unhealthful and annoying odors in said neighborhood;

That the loading and unloading of large quantities of coal, fire wood and kindling on said premises and the bringing thereto of large numbers of motortrucks and ice and coal wagons will create on and around said premises large quantities of dirt, dust, and gasoline fumes, which will be scattered over the neighborhood and into the houses and on the premises of these plaintiffs;

That heavy machinery is intended to and will be necessary in manufacturing ice in said plant, and the operation of said machinery will be constant throughout the day and night, and will by reason thereof make continuous and disturbing noises during the usual hours of rest;

That the erection, maintenance and operation of said plant as aforesaid will in law and fact constitute a nuisance to plaintiffs, their families and other adjacent property owners and residents in that

(a) The character of the structure and plant and the nature of the business carried on therein and thereat in a residential neighborhood as alleged herein will greatly and unreasonably destroy and depreciate the market value of the property of these plaintiffs;

(b) The noises, odors, mists, dust and dirt emanating from the operation of said plant and created thereby as aforesaid will be so great as to unusually disturb the comfort and quietude of plaintiffs and the members of their households, and to render their homes uninhabitable with any reasonable degree of comfort and peace, and will so greatly disturb the sleep and rest of the plaintiffs and the members of their households as to force them to abandon their homes or become ill and sick therefrom, thereby inflicting upon plaintiffs and their property great and irreparable injury and damage.

## THE RIGHT TO REBUILD BUILDINGS DAMAGED BY FIRE

One of the troublesome questions both in zoning and building regulation is the case of the building that has been damaged by fire and which its owners wish to rebuild and restore to its former use, in the fashion in which it was originally built. In the old days these cases gave great trouble in building regulations where buildings had originally been built of wooden or flimsy construction and had been allowed to remain in districts where that type of construction had for some years been outlawed with regard to any new buildings that might be erected in that neighborhood. It is a very natural thing for the owner of such a building, when it is partly destroyed by fire, to wish to restore his building and use it just as he did before the fire. But where the amount of damage is considerable, it is obviously against the public interests to allow such a type of building to be perpetuated.

The same case constantly arises in zoning ordinances in connection with what has come to be known as "Non-conforming Uses." Zoning experts and city planners, therefore, will hail with considerable satisfaction, a decision of Connecticut's court of last resort, the Supreme Court of Errors, handed down about a year ago, *State v. Hillman, 147 Atl. 294.*

This case hinged upon the question of whether a property owner whose building had been damaged by fire to the amount of 75% of its value could re-build it in the face of a provision in the zoning regulations that prohibited re-building where such destruction exceeded 50% of the assessed value, on the ground that it constituted a non-conforming use that should not be perpetuated under these circumstances.

The case arose in the city of Bridgeport in connection with the business of the City Barrel Company, which stored, washed, repaired, burned and steamed barrels of various kinds and descriptions that had contained fish, lard, oil, cider and other commodities. On June 19, 1926, a fire destroyed about 75% of the assessed value of the building.

Within two or three days after the fire the Building Commissioner of Bridgeport denied the Company's application for a permit to reconstruct its buildings for this reason. About a month later the Zoning Commission of Bridgeport changed the zone in which the company was located from a "light industrial" to a "Class C" Residence zone, which would have prohibited the use of the building in question.

The Company appealed to the Board of Zoning Appeals to permit it to rebuild its buildings. The Board of Appeals denied this. Later, the Board of Appeals granted a temporary permit to the company to reconstruct a temporary roof so as to carry on its business for a period of not exceeding 6 months while it was finding a new location. At the end of 6 months a further extension of a second 6 months was granted, making a year in all. At the end of the year, the Company having failed to find a new location continued to carry on its business in the temporarily repaired building when it was notified by the local authorities to discontinue business as of a certain date. Failing to do this, the officers of the company were sued on the ground of using a building for a use in violation of the zoning regulations.

The court in its decision says:

> The only questions of serious moment upon the appeal, are whether the public act and the regulations passed pursuant to it violates Section II of Article I of the Constitution and Section I of Article 14 of the Amendments to the Constitution of the United States, in that they purport to deprive this company and this defendant of his property without just compensation.

After citing the Euclid Village case and many others in a long line of decisions, the court reaches the following conclusion:

> Construing the regulations in the light of the established principles to which we have referred, we are unable to hold that when over 50% of its buildings are destroyed it was not a fair exercise of the police power to refuse to permit the company to restore the burned building and continue the nuisance in a light industrial zone. Nor can the right of the city to change the locality where the company's property was located to a residence zone and thus prohibit the continuance of this business, be held to be an unreasonable exercise of the police power under the circumstances present in this case.

The fact that the zoning ordinance was a comprehensive one seems to have influenced the court in its decision. It says on this point:

> The regulations before us are comprehensive in scope and divide the city of Bridgeport into zones which, so far as appears, are not unreasonable.

And finally the court concludes:

> Zoning regulations of this character reasonably applied will promote the morals, health, safety, welfare and prosperity of the community for which they were adopted and aid in the community development. They are the offspring of urgent urban necessity; they find their support in the police power, never to be exercised save for the public welfare.

## POWER TO ENJOIN VITAL TO ZONING PRACTICE

How important it is for zoning consultants to make sure that ample provision is made for the enforcement of the zoning ordinances which they recommend has been recently emphasized by a decision of the court of last resort of North Carolina, *City of Elizabeth City v. A. F. Aydlett, U. S. Daily, May 1, 1930.*

This case arose in connection with the building of a gasoline filling station in the City of Elizabeth City in that state, the city authorities seeking an injunction from the courts of that state restraining the construction of the filling station. No provision was contained in the zoning ordinance giving the city authorities specifically the right to such injunctive relief, the only remedy being the declaration that a violation of the ordinance was a misdemeanor.

In a long decision the court states that the only question involved in the appeal from the trial court was the question whether the city could maintain its action against the defendant for injunctive relief to prevent the defendant from violating an ordinance of the town the violation of which was a misdemeanor—a crime. To this question, the court answered "We think not".

After reviewing the leading decisions on this interesting legal point, the court points out that the ordinance in question provided its own method of enforcement, that a violation was made a misdemeanor and punishment was by a fine of $50. Each day's violation constituting a separate offense. The court concludes that no remedy at equity through the injunctive process lies in such a case where the building complained of is not a nuisance *per se* and the legislature has not granted to the local authorities specific rights to seek relief through the injunctive process.

It was a realization that such cases would be encountered that led the framers of the Department of Commerce Standard Zoning Enabling Act to include a specific grant of such powers in that statute. The first person to recognize the importance of this aspect of zoning laws—and their ancestors, housing laws—was Lawrence Veiller, who 30 years

ago, wrote into the New York Tenement House Law—for the first time in the history of such statutes in this country—a provision giving to the local authorities the right to restrain the erection of a building through the injunctive process.

Discussing the powers with which local officials—in this case health officers—should be equipped to insure the proper enforcement of housing laws, Mr. Veiller in his *Model Housing Law* has the following to say:

> It is deliberately planned in this and other sections to give to the enforcing officials in their fight against unsanitary conditions every weapon known to modern or ancient warfare. The health officer should be armed with rifle, shot gun, automatic revolver, howitzer, stiletto, dirk, cutlass, and poignard. * * *
>
> Under the provisions of this and other sections the health officer may use any or all of the following methods in trying to bring about compliance with the law. He may sue the responsible person for a penalty in a civil suit; he may arrest the offender and put him in jail; he may stop the work in the case of a new building, and prevent its going on; he may prevent the occupancy of a building and keep it vacant until such time as the conditions complained of are remedied; he can evict the occupants of a building where conditions are contrary to law and prevent its reoccupancy until the conditions have been cured; and, finally, he can hire workmen and go in and remedy the defects himself, charging the cost to the owner. All of these things a health officer should be given power to do. No one of them is unnecessary.

The same powers are needed if zoning laws are to be adequately enforced.

## CONTROLLING DENSITY OF POPULATION BY ZONING LAWS

### The Illinois Decision

As zoning principles become better established it is natural that zoning practitioners should seek to use these vast powers in an effort to control situations that heretofore have not been subject to control.

Finding that it is possible by zoning regulations to control the height of buildings, the amount of open space that shall be left adjacent to buildings of varying heights, the sizes of yards and courts—even the amount that a building must set back from the street line in order to leave a front yard and a wider open space in front—it is not strange that zoning practitioners should seek to make further advances in this field.

One of the results that they are now seeking to bring about through zoning regulations is the control of density of population by limiting

the number of families that will be permitted in different zones to live on each acre of land. Desirable as the result sought to be achieved is, we have always thought that in attempting to do this, zoning practitioners were on dangerous ground. There is no precedent in this country to justify such limitation.

The desire to achieve it is based largely upon the English example. There, so far as we can discover, there is no scientific basis for the standard which has been adopted in that country of the limitation of 12 families to the acre in rural parts and of 18 families to the acre in the large cities. So far as can be discovered, this is an arbitrary figure reached on no scientific basis and not susceptible of justification on grounds of health or safety.

In England it is not part of a scheme of legal control of the development of private property. It is not found in the Building By-Laws but is encountered chiefly in connection with government-aided Housing Schemes, where the control of the purse enables the Government to lay down certain conditions that must be observed before government funds can become available.

In view of these facts it is not surprising, therefore, to find the court of last resort in the state of Illinois, setting aside the provisions of a zoning ordinance in the City of Lake Bluff that restricted the number of families to 14 to the acre in a district in which apartment houses were permitted.

While the Court in this case, *Bjork v. Safford, 164 N. E. 699,* skillfully avoided deciding the direct point at issue—viz., the legality of restricting occupancy per acre—by holding that this requirement did not apply to "flats" but only to "dwellings", it is quite evident from the language used by the court in its opinion, that had they not found this way out of their difficulty, they would have held that the requirement restricting the population to 14 families per acre was unreasonable, discriminatory, and therefore void. For on this point the court says:

> From a consideration of all the evidence in the case we are of the opinion that if the section of the ordinance containing the 14 family restriction be so construed as to apply to flats it is unreasonable and discriminatory and therefore void.

To hold that the requirement did not apply to flats, but only applied to private dwellings, showed that the court had little conception of the elements involved in this requirement and of the reason for its enactment. Everything in the statute indicates plainly that it *was* intended to apply to so-called "flats", or multiple dwellings. For, as

the court points out, flats are expressly permitted in "C" residence districts—though prohibited in "A" and "B" residence districts—and that in such "C" residence districts in which flats are permitted the ordinance provides that "no dwelling or group of dwellings shall hereafter be erected or altered to accommodate or make provision for more than 14 families on any acre of land, nor make provision for more than a proportional number of families on a fractional part of any acre of land."

The court by rather sophistical reasoning so juggles the terms "flat" and "dwelling", as to make it possible to hold that the term "dwelling" as used in the ordinance does not include a flat or apartment building containing 18 families. For it was that type of building that it was proposed to erect in the case at bar on about ⅓ of an acre of land.

It is evident from the court's decision in this case that the case must have been badly presented. For otherwise the court could hardly have failed to realize that restricting the population was infinitely more necessary in the case of "flats" or apartment houses than it could possibly be in the case of private dwellings. Apparently the court had the conception that what it was sought to prevent was overcrowding of the land by a number of dwellings, instead of the fact that what was sought was to restrict the number of people that might occupy a certain area of land.

The lessons to be gathered from this decision—and which should be taken to heart by all zoning practitioners—are the necessity of having a fact basis for every provision and such that it can be sustained in court, as well as the great desirability of precise use of terms in a zoning ordinance. Had there not been the careless use interchangeably of the terms, "dwellings", "dwelling houses", "flats" and "apartments" in this ordinance, this decision could hardly have resulted.

## DENSITY CONTROL SUSTAINED IN BALTIMORE

In striking contrast to the decision of Illinois's highest court was a case decided in one of the lower courts in Baltimore about the same time in a decision handed down by Judge Stanton of the Baltimore City Court, *Protestant Episcopal Church v. the Mayor of Baltimore, Baltimore Daily Record, October 17, 1928.* Here also the case hinged upon a provision of the zoning ordinance that limited the number of families to the acre—in this case to 6. A corporation desiring to build an apartment house arranged for 100 families, made application

for a permit for such a building to the building officials. The permit was refused on the ground that in the zone in which the proposed building was located the law limited such buildings to 6 families to the acre.

Whereupon, the owner of the property sought to obtain from the City Council the enactment of a special ordinance that would have permitted what the law forbade. Failing this, he took an appeal to the Board of Zoning Appeals; that Board granted the permit, and an appeal was taken from their action by the city authorities to the City Court.

While the court did not go into the basic question of the validity of an enactment restricting the number of families that might live on an acre of land, it held that the action of the Board of Appeals was virtually the setting aside of the provisions of the law and reversed its decision and denied the permit.

## A VALID WAY OF RESTRICTING POPULATION IN A ZONING ORDINANCE

That there are ways by which density of population may be restricted through zoning and building ordinances is evidenced by a decision of New Jersey's Court of Errors and Appeals, handed down about two years ago, *Van Duyne, Inc., v. Senior, 143 Atl. 437.*

In this case a provision of the building code of the city of Montclair that limited apartment houses containing more than 6 families to a height of 3 stories was challenged as being unreasonable and unconstitutional.

The official authorities in Montclair, however, were able to show to the satisfaction of the court that one basis for this requirement was found in the existing situation with regard to the town sewage facilities, and that because of the inadequacy of its present sewage facilities it was necessary to limit the height of future apartment houses as had been done in the building ordinance. This issue of fact was tried and a jury found that the representations made by the city officials were correct and the Court of Errors and Appeals sustained the ordinance on this ground.

This is simply further evidence of the fact that there are a great many weapons in the armory of zoners and city planners that are not used—and which could be used effectively.